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"A MISSION TO THE MILLIONAIRES": WEALTH AND REFORM

The financial crisis of 1873 initiated two decades of nation-wide economic, social, and political turbulence. Because the whole population was tied into a national economy, everyone was affected, even though the majority of Americans continued to live on farms. The settlement of the American West had occurred simultaneously with the expansion of agricultural domains in Canada and Russia --all of which fed into an international commodities market. Agriculture was tied to railroads, which transported its product to market, to agricultural machinery manufacturing, which provided the means to cultivate the prairies and plains, and banking, which supplied the credit commercial farmers needed to expand their production. Extractive industries -- coal and iron mining --were, in turn, dependent on railroads and manufacturing. Disruption in any part of this rapidly integrating economic network affected other parts.

The turbulence of the years between 1873 and 1893 was not merely a matter of economic downturn. While some industries declined, others expanded rapidly, their growth fueled by new technologies. Thus, for example, the anthracite iron industry of eastern Pennsylvania was virtually eradicated in the seventies, wiping out the economies of communities that had grown in the years before the Civil War and flourished during the war itself. At the same time, the introduction of Bessemer steel technology, which used soft coal, shifted the center of the iron and coal industries westward towards Pittsburgh, Wheeling, and the cities of southern and eastern Ohio. This industrial shift created new jobs -- but they were jobs involving far less skill than the old ones. It also created new fortunes, since the men who controlled the new technology were not the same as the ones who had grown wealthy on the old.

At first, the public's response to economic crisis was puzzlement. Americans were accustomed to thinking of economic success and failure as matters of individual responsibility and morality -- they could not conceive of the economy as a *system* in which the actions of individuals counted for little. Nor could they grasp the scale of the personal fortunes being rapidly accumulated by a few.

The publication of Henry George's pamphlet, *Progress and Poverty*, in 1879 signalled a shift in American perception of the crisis. Rather than assuming that this best of all possible worlds was being disrupted by "outside agitators," George identified the causes of disorder in industrialism itself:

The present century has been marked by a prodigious increase in wealth-producing power. The utilization of steam and electricity, the introduction of improved processes and labor-saving machinery, the greater subdivision and grander scale of production, the wonderful facilitation of exchanges, have multiplied enormously the effectiveness of labor.

At the beginning of this marvelous era it was natural to expect, and it was expected, that labor-saving inventions would lighten the toil and improve the condition of the laborer; that the enormous increase in the power of producing wealth would make real poverty a thing of the past. . . . And out of these bounteous material conditions he would have seen arising, as necessary sequences, moral conditions realizing the golden age of which mankind had always dreamed. . . . For how could there be greed where all had enough? How could the vice, the crime, the ignorance, the brutality, that spring from poverty and the fear of poverty, exist where poverty had vanished? Who would crouch where all were freemen; who would oppress where all were peers?

Now, however, we are coming into collision with facts which there can be no mistaking. Unpleasant as it may be to admit it, it is at last becoming evident that the enormous increase in productive power which has marked the present century and is still going on with accelerating ratio, has no tendency to extirpate poverty or to lighten the burden of those compelled to toil. It simply widens the gap between Dives and Lazarus, and makes the struggle for existence more intense. The march of invention has clothed mankind with powers of which a century ago the boldest imagination could not have dreamed. But in factories where labor saving machinery has reached its most wonderful development, little children are at work; wherever the new forces are anything like fully utilized, large classes are maintained by charity or live on the verge of recourse to it; amid the greatest accumulations of wealth, men die of starvation, and

puny infants suckle dry breasts; while everywhere the greed of gain, the worship of wealth, shows the force of the fear of want. The promised land fled before us like the mirage. The fruits of the tree of knowledge turn as we grasp them to apples of Sodom that crumble at the touch.

Henry George was one of the few Americans who, at least in terms of his general approach, seemed to understand the broad dimensions of the crisis of order. *Progress and Poverty* was published at a time -- right after the great railroad strike of 1877 -- when literate Americans were ready for an alternative to conventional moralism, especially an alternative couched in familiar terms. Rather than merely repeating the anti-industrialism of Jefferson and Emerson, George accepted industrial organization but sought to tie it to traditional Christian and democratic values. And unlike Marx, with whose writings many Americans were familiar both through their publication in the 1850s Horace Greely's *New York Tribune* and through the writings of radical journalists in the 1870s, Henry George did not propose a revolution. He saw amelioration of the industrial system as coming from above -- and to this end explicitly addressed his work to the business community.

Edward Bellamy was another influential amateur political economist of the 1880s. Like Henry George, his background was in journalism. In 1886, his novel, *Looking Backward, 2000-1887* appeared -- first in serial form in the Springfield (Massachusetts) Republican and later in the year between hard covers. From George, Bellamy borrowed not only the idea of identifying the root causes of disorder in the fundamental processes of industrialism, but also the targeting of an upper-class audience as the group in society most capable of implementing change.

Bellamy's protagonist, Julian West, was a gentleman of property who, through an accident, slept through the troubled late nineteenth century and awoke at the end of

the twentieth, when the new social order was complete. The book began with a narration in West's voice describing the disorders of the 1880s:

What we did see was that industrially the country was in a very queer way. The relation between the workingman and the employer, between labor and capital, appeared in some unaccountable manner to have become dislocated. The working classes had quite suddenly and very generally become infected with a profound discontent with their condition, and an idea that it could only be greatly bettered if they only knew how to go about it. On every side, with one accord, they preferred demands for higher pay, shorter hours, better dwellings, better educational advantages, and a share in the refinements and luxuries of life, demands which it was impossible to see the way to granting unless the world were to become a great deal richer than it was. Though they knew something of what they wanted, they knew nothing of how to accomplish it, and the eager enthusiasm with which they thronged about anyone who seemed likely to give them any light on the subject lent sudden reputation to many would-be leaders, some of whom had little enough light to give.

More disturbing to Bellamy and other Americans than the increasingly violent clashes between labor and capital was the creation of a class of families the scale of whose wealth threatened the survival of democracy and capitalism. Society appeared to be splitting into "the haves" and the "have nots" and this split was framed by an emergent ideology -- social Darwinism -- which acclaimed the plutocracy as "the fittest" in the competitive struggle for survival. "I cannot do better," Bellamy's narrator continued,

than to compare society as it then was to a prodigious coach which the masses of humanity were harnessed to and dragged toilsomely along a very hilly and sandy road. The driver was hunger, and permitted no lagging, though the pace was necessarily very slow. Despite the difficulty of drawing the coach at all along so hard a road, the top was covered with passengers who never got down, even at the steepest ascents, These seats on top were very breezy and comfortable. Well up out of the dust, their occupants could enjoy the scenery at their leisure, or critically discuss the merits of the straining team. Naturally such places were in great demand and the competition for them was keen, every one seeking as the first end in life to secure a seat on the coach for himself and to leave it to his child after him. By the rule of the coach a man could leave his seat to whom he [4] wished, but on the other hand there were many accidents by which it might at any time be wholly lost. For all that they were so easy, the seats were very insecure, and at every sudden jolt of the coach persons were slipping out of them and falling to the ground, where they were instantly compelled to take hold of the rope and help drag the coach on which they had

before ridden so pleasantly. It was naturally regarded as a terrible misfortune to lose one's seat, and the apprehension that this might happen to them or their friends was a constant cloud upon the happiness of those who rode.

But did they think only of themselves? you ask. Was not their very luxury rendered intolerable to them by comparison with the lot of their brothers and sisters in the harness, and the knowledge that their own weight added to their toil? Had they no compassion for fellow beings from whom fortune only distinguished them? Oh, yes; commiseration was frequently expressed by those who rode for those who had to pull the coach, especially when the vehicle came to a bad place in the road, as it was constantly doing, or to a particularly steep hill. At such times, the desperate straining of the team, their agonized leaping and plunging under the pitiless lashing of hunger, the many who fainted at the rope and were trampled in the mire, made a very distressing spectacle, which often called forth highly creditable displays of feeling on the top of the coach. At such times the passengers would call down encouragingly to the toilers of the rope, exhorting them to patience, and holding out hopes of possible compensation in another world for the hardness of their lot, while others contributed to buy salves and liniments for the crippled and injured. It was agreed [5] that it would be a great pity that the coach should be so hard to pull, and there was a sense of general relief when the specially bad piece of road was gotten over. This relief was not, indeed, wholly on account of the team, for there was always some danger at these bad places of a general overturn in which all would lose their seats.

It must in truth be admitted that the main effect of the spectacle of the misery of the toilers at the rope was to enhance the passengers' sense of the value of their seats upon the coach, and to cause them to hold on to them more desperately than before. If the passengers could have only felt assured that neither they nor their friends would ever fall from the top, it is probably that, beyond contributing to the funds for liniments and bandages, they would have troubled themselves extremely little about those who dragged the coach.

I am well aware that this will appear to the men and women of the twentieth century an incredible inhumanity, but there are two facts, both very curious, which partly explain it. In the first place, it was firmly and sincerely believed that there was no other way in which Society could get along, except that the many pulled at the rope and the few rode. . . . It had always been as it was, and it always would be so. . . .

The other fact is yet more curious, consisting in a singular hallucination which those on the top of the coach generally shared, that they were not exactly like their brothers and sisters who pulled at the rope, but of finer clay, in [6] some way belonging to a higher order of beings who might justly expect to be drawn. . . . The strangest thing about the hallucination was that those who had but just climbed up from the ground, before they had outgrown the marks of the rope upon their hands, began to fall under its influence. As for those whose parents and grand-parents before them had been so fortunate as to keep their seats at

the top, the conviction they cherished of the essential difference between their sort of humanity and the common article was absolute. . . . (3-6)

Reform-minded journalist Jacob Riis brought these anxieties back to earth in his stunning 1890 expose, *How the Other Half Lives*. Though deeply concerned with the condition of the poor, what troubled him more was both the growing gap between the haves and the have-nots and the social dangers posed by wealth's ignorance of the growing misery of the poor. He posed this concern with striking effectiveness in his vignette of "the man with the knife":

A man stood on the corner of Fifth Avenue and Fourteenth Street the other day, looking gloomily at the carriages that [199] rolled by, carrying the wealth and fashion of the avenues to and from the big stores down town. He was poor, and hungry, and ragged. This thought was in his mind: "They behind their well-fed teams have no thought for the morrow; they know hunger only by name, and ride down to spend an hour's shopping what would keep me and my little ones from want a whole year." There rose up before him the picture of those little ones crying for bread around the cold and cheerless hearth -- then he sprang into the throng and slashed about him with a knife, blindly seeking to kill, to revenge.

The man was arrested, of course, and locked up. To-day he is probably in a mad house, forgotten. And the carriages roll by to and from the big stores with their gay throng of shoppers. The world forgets easily, too easily, what it does not like to remember.

Nevertheless the man and his knife has a mission. They spoke in their ignorant, impatient way the warning one of the most conservative, dispassionate of public bodies had sounded only a little while before: "Our only fear is that reform may come in a burst of public indignation destructive to property and good morals." They represented one solution of the problem of ignorant poverty *versus* ignorant wealth that has come down to us unsolved, the danger-cry of which we have lately heard in the shout that never should have been raised on American soil -- the shout of "the masses against the classes -- the solution of violence.

There is another solution, that of justice. The choice is between the two. Which shall it be? (199-200)

Riis and increasing numbers of his fellow reformers by 1890 shared an urgent sense of impending crisis. And these fears were intensified by the events of 1893, which featured a major economic crisis featuring the failure of 491 banks and over 15,000

businesses -- which was followed by a national railroad strike which prompted armed federal intervention, the imprisonment of railway union leadership, and the blacklisting of thousands of workers. In the meantime, populist radicals had taken control of the Democratic party, pushing a platform which urged nationalization of the railroads, utilities, banking, and communications industries.

In the midst of this crisis, Jay Gould, the "robber baron" who, perhaps more than any other figure of the period, epitomized the rapaciousness of big business, died. Of his multi-million dollar fortune, not a dollar was left to charity. The reformers seized on this as an opportunity to raise the consciousness of the wealthy and to push them towards the accepting the kinds of ideas about the responsibilities of wealth that Carnegie had so eloquently articulated in his 1889 "Gospel of Wealth."

Appropriately, the reformers who took the lead in this effort were a group centered around the British journalist, W.T. Stead --the man who had dubbed Carnegie's essay a "gospel." With American journalist-reformer, Albert Shaw, Stead had created an international magazine pushing reform ideas -- *The Review of Reviews* (Graybar, 1974). The February 1893 issue featured an article by Stead on Jay Gould and an unby-lined essay (probably by Shaw) on the benevolence -- or lack of benevolence -- of America's wealthy.

IN THIS NUMBER: JAY COULD, A Character Sketch by W. T. STEAD.
American Millionaires and Their Recent Benefactions.
The Inheritance Tax in America and Europe.
Public Control of Gas and Electric Lighting in the United States.
Current Problems of American Cities.

H. H. Keyes!

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W.T. Stead, "Jay Gould: A Character Sketch," *The Review of Reviews* VII: 37 (February, 1893), 25.

The greatest task which lies before Christian civilization to-day is a mission to millionaires. If that mission is not attempted, or if being attempted it fails, there will be of necessity easily in the twentieth century the nationalizing of these millions. The mission to the millionaires is imperatively called for alike in the interest of the millionaires who are perishing, stifled by their millions, and of society, whose institutions languish for lack of the nutriment necessary for their sustenance. If that mission is successful, the millionaire may still be ransomed. If it fails, the millionaire is lost. He may still be a rich man; but his millions will pass from his hands into those of the nation at large. The fruits of his energy, of his industry, of his genius in the field of finance will go to the credit of the nation, which appropriates without hesitation the fruits of the energy, the industry, and the genius of her captains in the field of war. The nation will not be ungrateful. It will pension its millionaires as it pensions its Marlborough for Blenheim and Remilies and Oudenarde and Malplaquer, or as it endows its Wolseley for his Tel-el Kebir. But it will no more dream of allowing them to bequeath their millions than of allowing Lord Wolseley to regard Egypt as his personal property, or recognize the right of the heirs of the Duke of Wellington to the fee simple of France.

THE GILDED BUDDHAS OF THE REPUBLIC.

I referred to this subject in the Christmas extra number of the REVIEW, when I put into the mouth of Jack Compton the following remarks on approaching the city of New York: "What is that city?" said Compton. "It is the city of millionaires -- nay, of billionaires. And what is this enormous wealth to the individual who inherits it? A burden too great to be borne. Increase of wealth up to a certain point means increase of comfort, increase of power. Beyond that point it means for its possessor increase of burden without compensation. A man may spend \$500 or \$5,000 a week in luxurious living, or in lavish expenditure, but beyond the latter sum few millionaires ever go. But the revenues of many far exceed that sum, and every penny of that

excess, although it may bring them the miser's sordid exultation, brings with it the miser's fears, the miser's foreboding."

"That is all very well," said the doctor; "but even if it be granted that the millionaire is of all men most miserable, I do not see how the misery of the millionaire, which, after all, most millionaires seem to support well enough, is to minister to the making of the Millennium."

"Wait a little," replied Compton. "The billionaire is a new portent of civilization. The race of millionaires by inheritance is but newly established. Can you imagine a more tragic contrast between the boundless potentialities of power and beneficence that lie glittering as a mirage before the eyes of a young millionaire of generous enthusiasm and philanthropic instincts and the treadmill round of mere hoarding to which they are all doomed? I could point out to you millionaire after millionaire who left the university longing to do something, or at least to be somebody, who are now nothing more or less than safe keys in breeches, the whole of their life consumed in the constant worry of seeing that their enormous investments do not deteriorate, and the not less arduous task of investing, to the best advantage, their surplus revenue. What a life for an immortal soul! They are like the men-at-arms in the old wars, so laden with their own armor their strength was used up in meanly conveying themselves about, and they had none left with which to fight. Their imagination is crushed by their millions. A political career is barricaded against them by their own money bags. A crowd of parasites and beggars swarm round them like mosquitoes round a weary wanderer in a Southern swamp. They can do nothing, dare nothing, risk nothing. They sit in the Republic like golden Buddhas cross-legged in an eastern temple, eternally contemplating their gilded paunch."

THE MODERN PEINE FORTE ET DURE.

The first edition was not off the press when the telegram arrived announcing the death of Jay Gould -- one of the greatest millionaires of them all. Jay Gould was dead at the age of fifty-eight, leaving a fortune of \$70,000,000 to his children and making absolutely no bequests of any kind to the nation whose development had made him rich or to the society which tolerated and fostered his accumulations. And, as I turned over the files of the newspapers sent me from New York, I found that Mr. Morosini, who for the last eighteen years had been more closely associated with Mr. Gould than almost any other man, said, speaking of the cause of his death: "My opinion is that his system gave way under the great strain resulting from the consciousness of his great wealth. It was a tremendous care and he was always weighed down with the anxiety and excitement of protecting his properties." That is a significant testimony as to the probability that nationalization may ultimately come about as the result of a bill to prevent the slow torture of millionaires. It is the *lieu peine forte et dure*. In old days, unwilling witnesses were pressed to death by a continually increasing weight upon their vitals; it is not unwilling witnesses, but only too willing millionaires, who are self-subjected to the latest variant of the old form of torture.

"Jay Gould," said Dr. Munn, his friend and physician, "had no organic trouble, but his heart had all it could do to irrigate a brain always hungry for more sustaining blood." It is the keeping of the fortune, not the making of it, that takes it out of a man. Jay Gould's private income at the time of his death must [26] have been close upon five million dollars a year. He probably did not spend 2-1/2 per cent. of it upon his castle, his yacht and conservatories. The other 97-1/2 per cent. had to be invested. And the worry of investing so much each year to advantage, together with the anxiety of seeing that the original capital did not depreciate, told heavily upon Jay Gould. He was never a strong man at the best of times. He always had an ache of some kind. Chest-ache, face-ache, neuralgia and chronic indigestion played havoc with his physical happiness. The pressure of his millions finished him.

A GOULD DYNASTY?

George Gould, the son, who, not yet thirty, has succeeded to the control of the Gould interests, will probably go the same way. For the Gould fortune is not to be dissipated. It is divided among the children, but they are going to do as the Rothschilds do -- found a great financial dynasty. Mr. Russell Sage, speaking of this, pointed out its possibility without venturing to predict that it would actually come to pass:

"Mr. Gould was a wise man, a very wise man, and his sons are wise young men --they are their father's sons. I know them all -- George, Eddie and Howard -- and I see them every day. They are business men by instinct and training. They have -- that is, the older boys -- familiarized themselves with every detail of their father's affairs, and they will carry out his ideas as nearly as they can. They are all boys of good habits, and fairly worshiped their father. There is no nonsense about them, as there is about some young men, sons of wealthy parents. Look at the power," continued Mr. Sage, "of accumulated wealth retained in one family. Look at the Rothschilds for an example of what one family can do by continuing a successful course in banking and by holding together. Now they are the wealthiest family in the world, and kings and emperors and vast countries have to come to them when they want to raise large loans, either to carry on a war or develop home improvement."

Mr. Sage did not predict that the Gould family would attain the power of the bankers of which he spoke, but he was certainly convinced that they could do so if they developed their enormous holdings in common, and there was one thing certain, that he was thoroughly convinced that no young Gould would ever leave business to go into this "society nonsense."

With such heirs, there is no reason why the future Goulds should not form a dynasty, which will be in America what the Rothschilds are in Europe. Jay Gould was not a Semite, although he had the Semite's nose and a more than Semitic grasp of cash. But he came of the New England stock that is Hebraic in its culture, and he had all the domestic virtues which

Puritanism insists upon. The Astors have now a fortune of \$200,000,000, which will probably be \$250,000,000 before the century closes. The Astors, however, have shown some sense of the truth that underlies the doctrine of ransom. The Goulds have not. Hence, it is likely that the bill for nationalizing the estates of all millionaires and pensioning off the present holders -- say with a beggarly pittance of \$25,000 per annum -- is more likely to come through the Goulds than through the Astors. But come it will, and that right speedily, if the mission to millionaires does not make more headway than it has done for some time past. Of which let all millionaires at home and abroad take due note.

THE CASE FOR "DEATH DUTIES."

Mr. Jay Gould in his will was as bad as one Mr. W. H. Smith. In making testamentary disposition of their immense wealth these millionaires forgot the million and remembered only a handful of relatives; and the consequence is that the million is beginning to reflect a little as to its means of quickening the consciences and loosening the purse strings of millionaires. It is by the "death duty" that the democracy will save the living from the threatened tyranny of the plutocrat. Nothing is more significant than the attention that the papers have been paying to the operation of the inheritance tax of the State of New York. By this law all personal estate, in passing at death from testator to legatee, pays one per cent. to the State if the legatee is a near relative, or five per cent. if the legatee is no relation. Real estate is exempt. Jay Gould's property, being for the most part railway and telegraph stock, is amenable to this tax. Therefore the State of New York receives from the Gould inheritance about \$700,000. If the money had been left out of the family the State would have received \$3,500,000. Supposing that the law had been altered so that all property above a million dollars paid one per cent., above ten millions five per cent., above twenty millions ten per cent., and over fifty millions twenty per cent., the State would have profited by Jay Gould's death to the extent of \$15,000,000.

THE LIMIT OF TAXATION.

The advantages of such enforced ransom naturally present themselves to the average citizen in a very attractive light. No one can say that the fear of such an impost would have lessened the consuming energy with which Jay Gould piled up his fortune. The mania for acquiring wealth is too strong to be damped by even a drastic death duty. It may be admitted without hesitation that when taxation reaches the point of paralyzing the motive for individual exertion it goes too far. But we are a long, long way off that yet, and it is as absurd to say that a death duty will paralyze the energies of a Gould as it would be to say that Moltke would not have fought the French with all his might unless he was allowed a perpetual rent charge on the conquered provinces, all of which leads us up once more to the reflection that, if millionaires are wise, they will seek to insure their millions by timely benefactions and by providing many object lessons as to the utility of preserving the millionaire *pro bono publico*. If Jay Gould had left tithes of his enormous accumulations to public objects he would have done no more than paid a moderate insurance, for lack of which the Goulds may yet lose all. Rockefeller, Hirsch, Rhodes, Lick, Peabody, Armour and Stanford have done much to convince the most envious that even millionaires have their [27] uses. But one sinner destroyeth much good and will such as those of Jay Gould and W.H. Smith show how much need there is for the prompt dispatch of another Jonah to the streets of the millionaire Nineveh. . . .

[41] VI.-A MORAL FOR MILLIONAIRES.

If we judge Jay Gould according to the impress which his character seems to have made upon the men of his own generation not personally acquainted with him, we would have to rank him very low in the scale of created beings.

"He was a broker," says Henry Adams in his history of the gold conspiracy, "and a broker is almost by nature a gambler, perhaps the very last profession suitable for a railway manager. In character he was strongly marked by his disposition for silent intrigue. He

preferred, as a rule, to operate on his own account without admitting other persons into his confidence, and he seemed never to be satisfied except when deceiving every one as to his intentions. There was a reminiscence of the spider in his nature. It is scarcely necessary to say that he had not a conception of amoral principle."

That may be said to represent, not unfairly, the moderate view of his critics. The "reminiscence of a spider" is good, distinctly good. But the whole carnivora has been ransacked to find analogies for Jay Gould. He has been a vulture, a viper, a wolf, a fox, a bear, and no one knows what other animals of prey. There is little doubt that Jay Gould did not shed crocodile tears over his victims any more than Napoleon did over the Prussians and Austrians whom he crushed at Jena and Austerlitz. But, just as it is possible for great warriors to be very humane, so it is possible for eminent financial operators to preserve their "bird in their breast," and, as a matter of fact, many of the kings of Wall street and of the Bourse have in the midst of their acquisition preserved a love of their fellow men as well as for their fellow men's cash.

A GOOD MAN OUTSIDE FINANCE.

Jay Gould was faithful to his wife, devoted to his children, and his character outside his all-absorbing devotion to money-making seems to have been tolerably simple and exceptionally good. He loved his friends and hated his enemies; there was no Phariseism about him, and neither was there any of the ordinary vices. Calumny itself never attached any [42] scandal to his name -- other than financial. He seems to have paid his men well, to have rewarded liberally carry out other evangelical precepts those who served him. He never went into society, being shunned rather than courted by the first families of New York. He was singularly free from affectation, and if there was a man diligent in business it was he. His taste in art seems to have been by no means bad. He was fond of reading. His one passion beyond that of getting money was the cultivation of flowers.

BUT WAS HE A GOOD MILLIONAIRE?

All this, it may be said, is beside the mark. As an individual, as a husband, as a father, and as a florist, he may have been ideal. But it is as a millionaire he must be judged, and as a millionaire he must be condemned or acquitted. That is to say, the judgment will go for or against Jay Gould, not upon the method in which he utilized the faculties and opportunities which are common to the whole human family, but as to the use he made of the exceptional faculties and opportunities that lay within his reach. In the plutocratic democracy, such as the United States, the millionaire is the king. His friends have again and again asserted that no man in the whole country was more powerful than Jay Gould. What use did he make of his millions? They say that he employed them to develop the resources of the great Southwest, to extend the telegraph system, and to generally promote the material welfare of the country. Well and good; that may be true, but of course there is another side to all this, and there are many who maintain that, even from a material progress point of view, the United States would have got on better off Jay Gould had never come out of the cellar in which his father locked him the first time he played truant. Those who take this view have a curious confirmation in the fact that within a week of Jay Gould's death the value of the stocks in which his fortune was locked up increased greatly. It was estimated at no less than \$4,000,000.

But is that all? His friends reply that he used his wealth not merely for the promotion of the material development of the United States, but for the prevention of panics, and in many cases for the saving of his friends from imminent ruin.

It may be so; the millionaire, with all his moneybags round about him, is driven by the instinct of self-preservation to endeavor to prevent catastrophes which would certainly impair the value of his securities.

Then, as to the saving of his friends, that is quite possible. All those who were in the inner circle declare that he was kindly dispositioned and inclined to help where he could.

HIS CHARITIES.

Then they say further that, despite the evidence afforded by his will, in which \$70,000,000 were left to his heirs, without a single cent being devoted to public charities or works of beneficence, that he had been extremely generous during his lifetime. But in strict accordance with the evangelical precept, he had not let his left hand know what his right hand did. It may be so, but it is to be regretted that he did not carry out other evangelical precepts, for nothing could be greater than the secrecy with which he covered all such beneficence. The secrecy is, indeed, so great that most people believe that no such beneficence existed. On one occasion it is said that he gave \$10,000 to a Presbyterian building fund, and that stands out as almost the only gift of any importance that he is said to have made. Dr. Green declares that his noble impulse and generous benefactions are known only to those who were intimately acquainted with him. The directors of the Missouri also lay stress upon these personal qualities of which the world knows nothing:

"Of the personal qualities of Mr. Gould we may record the just estimate of those who, by long and intimate association with him, have been made, as we believe, fit judges. Mr. Gould was a man of tried personal and moral courage, a kind, considerate and generous friend, modest and gentle in demeanor, moderate in speech, judicial and just in his judgments. To those whose business and personal relationship to him had been longest and closest he was most endeared."

According to Mr. Morosini:

"Mr. Gould gave away many fortunes in his lifetime. He always concealed his generous deeds, because rich men are besieged by beggars all the time. In one instance I was made the agent in a gift of \$65,000 to one man out West whom Mr. Gould wished to befriend. No one

ever heard of it. Several years ago it was telegraphed from Richmond that some unknown Northern man had responded to the appeal of those in charge at Mount Vernon and had purchased additional acres of land to be added to the old Washington estate. It turned out that Mr. Gould had bought the property and turned it over to the Mount Vernon people."

THURLOW WEED'S TESTIMONY.

The most remarkable statement, however, is that of the well-known philanthropist, the late Mr. Thurlow Weed, who in 1879 spoke as follows on this subject: "I am Mr. Gould's philanthropic adviser. Whenever a really deserving charity is brought to my attention, I explain it to Mr. Gould. He always takes my word as to when and how much to contribute. I have never known him to disregard my advice in such matters. His only condition is that there shall be no public blazonry of his benefactions. He is a constant and liberal giver, but doesn't let his right hand know what his left hand is doing. Oh, there will be a full page to his credit when the record is opened above."

If so, it is to be sincerely hoped that it will be to his credit hereafter, for it certainly has not been put to his credit at present. As an illustration of this, take the following extract from the sermon preached by the Rev. G. Inglehart, in Park Avenue Methodist Episcopal Church on the Sunday after his death:

Gould, with his seventy millions, was one of the colossal failures of our time. He was a purely selfish man. His greed consumed his charity. He was like death and hell --gathering in all, giving back nothing. To build up an immense fortune for one's self by fraud is a disgrace to the age, a mockery to virtue, a menace to public welfare. The love of money was the root of all evil in him. The motive that softens the footsteps of the burglar, that [43] nerves the arm of the highwayman, was the same that prompted Gould to break his neighbor up to build himself up.

In contrast to this sweeping denunciation of Gould's conduct, take the following story from an American paper of the way in which Gould disposed of his charity:

A pretty story is told of the charity organization society that existed in Mr. Gould's own household. Its sessions were held each morning after breakfast. Like other rich men he was assailed constantly with showers of begging letters. These were regularly sorted out every morning and each member of the family chose as many from the pile as desired until none were left. If a letter appeared to describe a case of real need it was placed in the centre of the table. The others were burned. Then ensued quiet investigation, conducted as secretly the operations of the closest detective bureau. People in want were given aid commensurate with the needs of the particular case, but were never able to thank the donor, for the identity of the giver was never disclosed. In this way, it is said, many hundreds of poor people were relieved.

Another method employed was to look up cases of distress independent of the petitions poured in by mail. To just what extent this charitable work was carried on will never be known, for those conversant with it will not speak of it.

It is, of course, an open question as to how far it is right and proper for a man of immense wealth to perform his charities in such a way that no one knows that they are being performed. No doubt the letter of the commandment might be pleaded in favor of the practice. But when the use of the wealth in every other direction is open and above-board, to conceal its employment in charitable and public service is to practically destroy the whole force of example.

GRANTING ALL THAT -- THEN?

But when all that is admitted, even if we grant that Jay Gould used his fortune for the purposes of development and not for purposes of wrecking railroads, if we admit that he used his immense wealth for steadying and not for disturbing the market, if we admit that he

frequently saved private friends from imminent catastrophe threatening ruin, and that his personal beneficence was as great as Mr. Morosini claims, that does not answer the question whether Jay Gould as a millionaire has fulfilled the functions for which millionaires were created or were permitted to exist. It cannot be said to be a very happy result of the exercise of his stewardship that he is held by nine out of every ten men to have denied altogether the existence of any such stewardship. If he recognized it he has caused his good to be evil spoken of by the way in which he openly used the money power. No doubt a good deal may be said in defense of using money to buy votes in a Legislature which is universally corrupt. That is the defense which Mr. Morosini makes for Gould's purchase of Senators and Assemblymen at Albany:

Mr. Gould was at Albany a good deal. He had to be, for no one even of his ability could have protected Erie against the legislative assaults continually made upon it. I know that when Tweed was in the Senate members of the Legislature were bought like so many cattle. It was perhaps the most corrupt Legislature we ever had. In order to preserve a railroad you had to light fire with fire, as the saying is.

But it cannot be said that a millionaire who uses his millions in order to bribe deputies in corrupt constituencies, and who further employs his wealth to induce judges to prostitute the judgment seat, has justified the possession of his millions to the consciences of his fellow-countrymen. It is true that Jay Gould did not spend his money over kept mistresses, but he spent it over kept judges, which is at least as bad.

THE MONEY POWER IN POLITICS.

But that is not the only offense which is alleged against him for the misuse of his money. It is asserted, with much detail, in a recent number of the *New York World*, that the presidential election, which placed Hayes in power in the presidential chair, was, decided by the corrupt use of Gould's money. Tilden had a majority of votes, but Gould, who had committed himself to

the support of Hayes, hearing that the members of the Electoral College in Louisiana and the Carolinas were amenable to influence, he dispatched astute emissaries to those States With power to draw upon his money, with the result that Mr. Hayes, although he was in a minority, was declared elected. Here we have an instance of the money power polluting the very arcanum of national life. When we hear of corrupt State legislatures and venal municipalities, we console ourselves by reflecting that the National Congress is free from such reproach, and that especially in the choice of a President we have an intelligent democracy exercising its highest functions in the full light of day without fear or favor, and with entire freedom from all the tyrannies and corrupting influences that infest older civilizations. But what can we make of a story such as, this of Gould thrusting Tilden out of the Presidential chair, to which he would otherwise have succeeded, and installing therein a nominee of his own. Surely this is the abomination which maketh desolate, set up in the Holy of Holies.

HIS SINS OF OMISSION.

But, after all, it is not so much by the direct abuse of the power which money gives that the millionaire of to-day will be weighed in the balance and found wanting. It is not so much the sins of commission as those of omission which he piled at his door. The wealth of such men as Jay Gould is a sceptre of power. The failure to exert that power in the promotion of the great causes which mark the progress of humanity is an offense which cannot be atoned for by any amount of the tithing of mint, anise and cumin. Private beneficence, even on the most lavish scale and conducted in the most secret way, can no more compensate for the failure to exert the authority and influence that a millionaire possesses in stemming the [44] tide of vice, ignorance and savagery, and in promoting the advent of a higher and nobler life. The regular attendance at a parish church does not justify a monarch in allowing his frontier to lie open to the incursions of the foe. Of the millionaire, more than of other men, may it be said, in "getting and spending we lay waste our powers;" but in the case of the millionaire it should be "getting and

hoarding we lay waste our powers." It was computed that a round the bier of Jay Gould were gathered some dozen men whose united fortunes amounted to one hundred millions sterling.

WHAT BILLIONAIRES MIGHT DO.

What could not these men do if they were to band themselves together in a sacred league to make war upon all those things which they themselves would unanimously agree were evils afflicting mankind? They will reply, no doubt, that they have not so much as a moment, to think of the disposition of such vast questions. The task that absorbs their time and consumes their energies is that of seeing that their investments are safe, and that their constantly accruing millions are profitably invested. Mr. Russell Sage, in September, 1890, said: "Mr. Gould cannot begin to use even a small portion for his own personal use even a small part of the interest which his dividend money alone would yield. He must reinvest it, and he does reinvest it. It is safe to say that he takes this money as the dividend period comes around and buys other securities." In other words, they have got so much to do in the getting and hoarding that they have neither inclination nor time, or they have no time even if they have the inclination to concern themselves about its disposition. Such a position is a dangerous one for them to take up. Great wealth, unless greatly used, will not be left long in the administration of individual men. If it be true that the getting and hoarding absorbs the whole of the gray matter in the millionaire's brain, then we shall not have long to wait before we shall see the crystallizing of the inarticulate unrest of the suffering multitude in the conviction that there should be a division of labor, and that while the millionaire should be allowed to get his millions, the elected representatives of the democracy should decide the way in which it should be spent and distributed. The millionaire would thus be relieved of the burden of looking after his millions, and could devote the whole of his time and energy to the more congenial task of amassing them.

WHAT DEMOS WILL DO IF IT IS NOT DONE.

No necessary work can long be left neglected, and if millionaires will not distribute their own wealth and use their great position with great souls and hearts, they will find that they will come to be regarded by the hungry and thirsty Demos much as compensation reservoirs are regarded by the inhabitants of the cities who have constructed them to replenish the stream which their thirst would otherwise drink dry. These great fortunes of 70 millions and 100 millions and 300 millions of dollars will come to be regarded as the storage service upon which mankind draw in seasons of scarcity and drought. That is the use which society will make of its millionaires if millionaires do not anticipate the inevitable by utilizing their millions. Some people imagine that the progress of democratic society will tend to discourage the accumulation of these huge fortunes; it is more likely that Demos will regard his millionaires as the cottager regards his bees. These useful insects spend the live long summer day in collecting and hoarding up in their combs the golden plunder of a thousand flowers, but when the autumn comes the bee wishes to take its rest and to enjoy the fruits of its summer toil. But the result does not altogether correspond with the expectations of the bee. A few more Jay Goulds and the autumn of the millionaires will be near at hand.

The threat posed the nation by "ignorant wealth" was unmistakable. In Stead's view, if Gould's leaving his wealth to found a dynasty became a pattern, radicalism would surely have its way. And, indeed, there were already signs that it would: in 1892, under pressure from populist radicals who had taken control of the Democratic party, Congress passed an income tax bill in 1893. Although declared unconstitutional by the Supreme Court the following year, still more extreme proposals were in the works. The Democratic platform for 1896 would call for public ownership of the banking, communication, and transportation systems. Again, though the classes triumphed over the masses in '96, it became apparent to more level-headed elements among the

wealthy that, if they wished to keep their riches, they would have to begin socially reinvesting them.

The unsigned article accompanying Stead's study of Gould is an effort to show to the wealthy -- who presumably made up a significant portion of the *Review of Reviews* readership -- the extent to which their peers were already committed to proactive philanthropy. The differences in charitable traditions described in this state-by-state survey are -- both in terms of relative generosity and in terms of whether donations were being made to public or private institutions -- especially worth noting. Interestingly, the distinction between *public* and *private* philanthropy, which would become so important in the twentieth century, is not considered a significant difference. The author's comments on Boston's lack of charitableness is clearly based on an inability to understand the highly institutionalized character of that city's elite and its modes of giving.

"American Millionaires and Their Public Gifts," *Review of Reviews* VII: 37 (February 1893), 48-60.

SEVERAL months ago there was compiled and published by the *New York Tribune* a directory of American millionaires. The list fills nearly a hundred large pages, and includes a grand total of 4,047 names. It is an extremely interesting publication, and the student of our social economics a hundred years hence will find it invaluable as a part of his material for the study of our condition in the last decade of the nineteenth century.

It would be instructive to have for comparison with this one a catalogue of the American millionaires of forty years ago. The list at that time could probably have been put into one or two pages of the kind of which the present directory requires nearly a hundred. At the outbreak of the war not only were great fortunes few in number, but the amount of property which in those days was accounted great wealth would now be deemed a very moderate fortune.

GREAT FORTUNES ARISE FROM GREAT OPPORTUNITIES.

The stupendous development of the country has given opportunities never known in the history of the world before for the accumulation of immense private holdings, and our social life, our political methods, and our democratic institutions are all profoundly affected by the existence among us to-day of a recognized class of great capitalists who command congeries of agencies and forces which had no practical existence among us as recently as the election of Abraham Lincoln to the Presidency of the United [49] States. The career of the late Jay Gould, so graphically recounted by Mr. Stead elsewhere in the REVIEW, is representative of the circumstances under which these colossal fortunes have been amassed by men who had the energy and the discernment to take advantage of their opportunities. The story of Mr. Andrew Carnegie, who, like Mr. Gould, began life as a poor boy not so very long ago, and whose wealth is now counted by the tens of millions, is in its own way not less typical. Even more remarkable than Mr. Gould's or Mr. Carnegie's, as measured by results, is the career of Mr. John D.

Rockefeller, who is said to be so rich that he might transform a hundred paupers into a hundred millionaires and still remain the master of tens or scores of millions.

Mr. Rockefeller's accumulations are thoroughly typical of the fortunes made by hundreds of men in the *Tribune's* catalogue, in the fact that they represent the relentless, aggressive, irresistible seizure of a particular opportunity, the magnitude of which opportunity was due simply to the magnitude of this country and the immensity of the stream of its prosperous industrial life. The magnificent creative faculties and business abilities of Mr. George M. Pullman must perforce have brought profit to himself and to others, even if his sphere of operations had been restricted to some pent-up Utica. But the vastness of the fortune he has won is due to the vastness of the railroad system of the United States upon which his palace car service is employed. Mr. Pullman's hotels on wheels are to-day in motion over more than one hundred and twenty-five thousand miles of railways. The same tremendous development of the nation in the past quarter century which has peopled the wilderness, doubled the number of States in the Union, doubled the population of the country and created a series of magnificent new cities, has given us, along with a large increase in the average wealth of all those who belong to the property-holding classes, an immense increase also in the number of the men who are very rich.

SHOULD THE STATE LIMIT PRIVATE WEALTH?

The large fortunes, for the most part, have been won through the same kind of honorable and legitimate adaptation of means to ends that has produced the smaller fortunes. As a matter of theory, it is perfectly legitimate to discuss the advantages and disadvantages that would arise from a legal limitation of the size of men's fortunes. As a matter of practice, moreover, the State may, whenever it chooses, arrange any system that in its sovereignty it may please to try, for the better equation of wealth by progressive inheritance taxes, or by any of the other methods that statesmen, economists and socialist writers have suggested. But the

phenomenon of the, [49] multi-millionaire is in fact too new to be ripe for any special legal treatment as yet.

In the nature of the case, there seems no logical reason why a man who is permitted to own one hundred thousand dollars should not also be permitted to own one hundred millions. There may, however, be good and sufficient reasons why the man who owns one hundred million may be debarred from saying who shall hold and enjoy that vast accumulation of wealth when he himself is dead and gone. There is, indeed, much reason to believe that we shall, within a quarter of a century, witness some new and radical experiments in the direction of laws regulating the transmission of property.

"SOCIAL WEALTH" MAKES MILLIONAIRES.

One thing about millionaires is sufficiently clear. Those very conditions which have made the accumulation of wealth in a rapidly expanding country comparatively easy, afford the most inviting opportunities for the expenditure of wealth in behalf of social objects. This proposition is too obvious to be gainsaid. Our great American fortunes are the product of social opportunities rather than of the mere creative power of their holders; and, while the possession of any superior gift or power entails responsibilities towards those less richly gifted which every true and thoughtful man must realize, it would seem especially true and plain that these new American millionaires, with fortunes amassed out of wealth produced by the sturdy and hopeful toil of men who have gathered here from all countries, should be keenly alive to the duty of holding themselves at the liberal service of their communities.

The time may come when our system of production and our system of taxation may be so arranged that what we term "social wealth" -- the unearned increment in expanding land values, the productive value of railway and other franchises, and the other forms of wealth that arise out of conditions which society itself creates -- will all accrue to the State for the benefit of

the whole people. But thus far, while individual men have toiled at good wages for what their individual efforts could directly produce, the large bulk of the social wealth which they were unconsciously creating by the very fact of their living and working in communities has gone to make up the fortunes of the rich.

AND THEREFORE SOCIETY HAS CLAIMS.

This social wealth-accruing from the control of mines, of lands, of patented monopolies, of railway and local franchises, and so on-is the wealth which, if it could have been diverted into the treasury of the state or the municipality, would have provided our young nation with the libraries, the hospitals, the provisions for the aged and helpless, the kindergartens, the practical training schools, the universities, the parks and gardens, the art galleries, the public baths, the statues and fountains, the music halls and endowed places of refined and instructive entertainment, and the various other common possessions, accessible to poor and rich alike, which ought to exist throughout the entire land to minister to the progress of the nation.

It should not be as a work of charity or supererogation arising from good will, but rather from the sense of obligation, that these public institutions should be provided out of the surplus accumulation of our millionaires. As we have already said, it is the wealth created by the whole people, and not by themselves, which our conditions of production and industrial development have diverted into the coffers of the millionaires. It is, therefore, perfectly sound and demonstrable as an economic proposition that the people of the United States have a right to look to these millions for the provision of the class of institutions we have specified.

THE PUBLIC DEBTS OF PRIVATE RICHES.

The socialists demand that our modes of taxation shall be so radically changed that the State shall turn the stream of social wealth directly into its own coffers, without the intervention of the millionaire at all. Certain tax reformers, on the other hand, would not interfere with the

operations of the millionaire, whom they regard as highly beneficial in his ability to seize and utilize wealth-yielding opportunities which might otherwise lie undeveloped. They would allow the bee to gather the honey, and subsequently they would lay hands upon a considerable part of the accumulated sweetness for the general benefit.

But whatever may come in the future from the demands of the socialist or the arguments of the progressive inheritance-tax reformer, it would be well if every millionaire should of his own accord begin to, make use of his wealth as a fund which he is under heavy moral obligation to draw upon for the welfare of his fellow-men in general, and for the welfare in particular of those in his own community whose efforts have furnished the groundwork upon which his, fortune was built up.

THE CASE OF MR. YERKES.

Thus Mr. Yerkes, in Chicago, has just recognized this principle by giving half a million dollars to the, Chicago University for an observatory with the largest telescope in the world. Mr. Yerkes has made, a great fortune by the operation of street railways in Chicago. He paid little or nothing for franchise, which are worth many millions. If the municipality of Chicago had chosen to own and conduct its own street railway system, the wealth which these franchises earn would have accrued to the public treasury, and would have been available for educational and other social objects. Since these great values, created by the people themselves, have for the most part been absorbed into great private fortunes, it is only right that a community like Chicago should look to the holders of such fortunes for the public institutions without which, though seemingly rich, it would really be a poor and mean and unworthy community.

[50] A CATALOGUE OF CONVERTED MILLIONAIRES.

It would be highly interesting if the *Tribune* catalogue of millionaires could be checked off from beginning to end, in order to separate those who have shown some considerable measure of recognition of their obligation to use their wealth for the social well being from those unfortunate and unpatriotic men who hold to the doctrine that what they have is theirs, to use as selfishly and narrowly as if they had no neighbors. The *Tribune's* lists have been compiled with very great pains; and while they cannot, in the nature of the case, be free from errors, including, doubtless, some fortunes which are not worth as much as one million dollars and omitting others which would be justly entitled to a place, they are sufficiently correct and representative for all practical purposes.

JAY GOULD AS ONE TYPE.

It would be a difficult task that would confront a suppositious "Mission for the Conversion of Millionaires to a Sense of their Social Obligations," if it should attempt a reclassification of this catalogue with a view to dividing the redeemed from the unregenerate. Yet, in a tentative way, such a classification might be accomplished. Mr. Stead, in his character sketch, while not disposed to sit as a judge upon Mr. Gould's motives, has clearly chosen to use Mr. Gould as a type of the millionaires who do not recognize their obligation to use their wealth for the good of the community which created that wealth. If Mr. Gould's opportunities to gather for himself scores of millions -- through the telegraph monopoly of North America, through the elevated railway monopoly of New York and through several great railway systems which were in a position to exact tribute from Western producers -- were of the most extraordinary magnitude, so were also his opportunities to use his wealth for the benefit of the people of New York City, of St. Louis, of Texas and of the nation at large no less magnificent. And these opportunities entailed obligations, but apparently he did not recognize them.

COOPER, PEABODY AND PRATT AS OTHER TYPES.

On the other hand, we have in this country men who for years have recognized this obligation fully and have acted upon it systematically, with results so useful that no words can do them justice. The value of Peter Cooper's ministrations to the people of New York can never be fully appreciated, because there is no measuring rule that can be applied to meet the case. Long before his death the various agencies -- the night schools, the art schools, the great reading room, the public meeting places and the other facilities for popular instruction -- that are gathered under the roof of the Cooper Union, had repaid the cost a hundredfold. But now that the noble philanthropist has gone to his rest, big work lives on; and thousands of young people every year are the gainers for what one man saw fit to do with his wealth in the city where he had obtained it. In Brooklyn, the great Institute for popular instruction, founded and developed by the late Charles Pratt, will in like manner live on to testify to the wisdom and true sense of social obligation of the lamented citizen whose name it bears. The history of our earlier philanthropy is enriched by the name of Peabody, whose great library in Baltimore, with its accompaniment of endowed lecture courses, music schools and art classes, is an essential part of the life of that city; while his fund for the aid of education in the South and his fund for the building of tenement houses in London axe accomplishing good results, the volume of which is increased from year to year.

MR. CARNEGIE AND HIS GOSPEL

Among the men of colossal fortune who are now practical exponents of the doctrine that great wealth imposes imperative obligations, no man has taken a more pronounced position than Mr. Andrew Carnegie. There has been an attempt in some quarters to disparage Mr. Carnegie's benefactions because the manufacturing establishments of which he is the largest owner have had serious disagreements with the labor unions. But the two matters have no necessary connection. The organization of industry and the adjustment of disputes between capital and labor present distinct problems, which cannot be discussed to good advantage in

connection with the question of a millionaire's responsibility for the use of his realized wealth. Mr. Carnegie recognizes that responsibility in the fullest measure; and the methods he has chosen have been altogether admirable. His example cannot be too strongly commended. Public libraries, music halls, art galleries and similar institutions should be regarded as among the necessities rather than the luxuries of modern enlightened towns and cities, and [51] it should be deemed the business of men of wealth to provide such institutions.

MR. ROCKEFELLER AND CHICAGO UNIVERSITY.

No rich man's recognition of his opportunity to serve society in his own lifetime has ever produced results so mature and so extensive in so very short a time as Mr. John D. Rockefeller's recent gifts to the Chicago University. Upon the new seal adopted within a month or two by the institution are engraved the words "The University of Chicago, founded by John D. Rockefeller." It was certainly not longer ago than 1886 when it was announced that Mr. Rockefeller would give \$600,000 towards the resuscitation of the defunct Chicago University, if others, under the auspices of the Baptist Educational Society of the United States, would bring the sum up to a million. The task was undertaken and the million was in due time secured, chiefly through the gifts of citizens of Chicago.

By this time Mr. Rockefeller's ideas about the University had considerably expanded, as had those of the people of Chicago. Prof. William R. Harper was not the man to assume charge of an institution that should begin with small things and feel its way to larger ones. He had seen the Johns Hopkins University created and placed in fully as high a rank as Harvard and Yale in a shorter time than has usually been thought necessary for the development of an ordinary business enterprise. Moreover, he had witnessed the seeming audacity of the proposal of Mr. Leland Stanford to create a vast university in California in the same business-like fashion that Mr. Stanford had created the great stock farm, where his fast horses are bred. There was contagion in President Harper's large views, and there was a good staying quality in Mr.

Rockefeller's sense of social obligation. Possibly he had in mind the fact that his Standard Oil interests had gone steadily on increasing his wealth, and that the gaps made by his benevolences from time to time were quickly filled up by those accretions which every great fortune in active use almost inevitably gathers. In September, 1890, Mr. Rockefeller gave another million in cash; in February, 1892, he gave still another million, and his recent Christmas present to the University was yet another million in gold bonds.

THE INFECTION OF LIBERALITY.

Such giving has had an infectious quality, so that around Mr. Rockefeller's original offer of six hundred thousand dollars, there has accumulated like magic a total of seven millions, and there is now in full operation, with a body of more than one hundred professors and instructors gathered from all parts of America and Europe, a university doing work of the highest character and instructing six hundred students. Mr. Marshall Field gave the University grounds, worth a quarter of a million dollars, and joined with other Chicago citizens in giving a million dollars in cash for the new building. About a half million has been given by the estate of William B. Ogden for the School of Science, the Reynolds estate has given a quarter of a million, Mr. C. T. Yerkes has, within a few months, given half a million for the telescope and observatory, and President Harper announces that the funds will soon reach ten million dollars, which he declares to be only the beginning of what the University will need and will expect.

The creation of this institution has a deep significance. It is to be made the centre for university extension work which shall to the largest possible extent distribute some degree of acquaintance with the higher education among as many as possible of the people of Chicago and vicinity. At the same time, it will minister to the most advanced learning and scientific research. And all this magnificent plant for the popular diffusion of learning and for the making of individual scholars and thinkers, has been evolved in an incredibly short space, through a slight levy upon the surplus millions of men who are no more conscious of the lack of the money

they have given than they are conscious of being poorer when they pay a five-cent car fare. The Chicago University will have done more, perchance, to educate millionaires to an appreciation of what they might easily do for their communities than it will ever have accomplished in any other way. The gentlemen who have contributed the seven million dollars now in hand have merely made a beginning. They will go on from year to year [52] to add to the equipment of this institution, and to provide other means for the public instruction and benefit which their increasing power of discernment will show them to be sadly needed. Mr. Rockefeller certainly can be relied upon, in his own ways, to continue thus to administer upon his own wealth in his lifetime.

PHILIP ARMOUR'S GIFT TO CHICAGO.

Chicago has been announced also as the recipient of another princely benefaction from a millionaire still in the vigor of business life. Some years ago one Of the Armour Brothers left at his death one hundred thousand dollars to be used for erecting a building for mission purposes to benefit the poor children of Chicago. It devolved upon Mr. Philip D, Armour to carry out the idea, and it has grown upon his hands into an institution of diversified purposes adapted precisely to the needs of the young people of the poorer and working classes. The Armour Institute is not simply a mission Sunday school, although a huge Sunday school is connected with it. There has been developed the plan of a series of trade schools; and the Armour institute will do for Chicago a work similar to that so nobly done by the Polytechnic in London - - a work like that of the Pratt Institute in Brooklyn, the Cooper Union in New York, and Mr. Drexel's magnificent new institution in Philadelphia, only that it will be still broader and more diversified, and will rest upon a basis distinctly religious, although undenominational. It is said that the carrying out of the full idea, including the new building for the manual training and practical classes, just completed, will have involved an expenditure by Mr. Armour of about three millions of dollars, including the large amount of productive property surrounding the institution which Mr. Armour has wisely given for purposes of perpetual endowment.

With the new University, the Armour Institute and the two magnificent libraries -- the Newbury and the Crerar -- which private beneficence has endowed, Chicago millionaires will have some good examples before their eyes. So much of the nation's wealth has been diverted into the coffers of rich men whose prosperity is identified with the development of Chicago, that the city ought within the coming decade or two to be the recipient of scores of splendid establishments for the public use and behoof, freely given and well endowed by millionaires.

GIVING IN LIFE VERSUS GIVING AT DEATH.

We have had numerous enough warnings, in the breaking of wills and the disregard of accurate instructions left behind them by dying millionaires, to make it clear that, whenever their circumstances will permit, these gentlemen of wealth should themselves give practical effect to their benefactions while in the enjoyment of health and strength. A more, lamentable miscarriage of justice, and a more pedantic perversion of law to work wrong, has seldom occurred than the defeat of Mr. Tilden's intention to give New York a great free library endowed with all his millions. Mr. Tilden fully recognized the obligations of wealth, and proposed most completely and nobly to meet those obligations; but he chose to have his trusted friends carry out his plans of beneficence after his death. Rather than be parties to so deep an offense as to prevent this money from reaching the ends it was designed to serve, the judges who were responsible for its diversion should have resigned their seats in order to make room for men whose legal consciences would have permitted them to render simple justice.

It does not follow when a man of wealth holds on to his millions through his lifetime and gives them to public uses after he can himself use them no longer, that his social obligations are less fully recognized by him than if he had built hospitals or colleges while alive. But he misses much of the satisfaction he might have found in life if he leaves his beneficences to be carried out by executors.

Thus Mr. Enoch Pratt, of Baltimore, who has built and endowed a great free library, has found infinite pleasure and satisfaction in giving his thought and energy to the working out of that noble enterprise. The late Johns Hopkins, on the other hand, bore the reputation of a man of limited benevolence and comparatively small public spirit during his lifetime, leaving his whole fortune of some seven millions of dollars for the creation of the famous university and the magnificent hospital which will make his name immortal. But after all Mr. Hopkins was no miser who at the close of life as a mere whim devised his wealth to public objects because it must of necessity go somewhere. He had deliberately, through long years, accumulated money with the intention that it should be used for the advance of learning and the relief of suffering. It was his judgment that his [53] personal function was to accumulate the property rather than to attend to the details of its use for these public ends, and that it could be used to better effect after his death than before.

CLASSIFYING THE GIVERS AND NON-GIVERS.

To revert once more to the idea of a checking off from the *Tribune's* lists of those millionaires who recognize wealth's responsibilities and account themselves as in some sense stewards to administer what is not their own for selfish uses -- some such classification is practically made from time to time in almost every one of our large communities. The promoters of local charities thus classify their wealthy neighbors. The anxious managers of struggling colleges, and the leaders in movements designed to supply to any given city the public establishments which testify to Christian humanity or liberal culture or aesthetic development -- all such workers make their lists, classifying their neighbors, and separating the givers from the non-givers.

Of course, many of the most truly liberal benefactors of their respective communities are not to be found in the *Tribune's* list, for the simple reason that their fortunes may be adjudged less than one million dollars. It need hardly be said that the half-millionaires are many times as

numerous as the whole millionaires. But, making allowances for the fact that the larger part of the volume of benefaction that flows from rich men's purses comes from those whose wealth lies somewhere between one hundred thousand and one million dollars, it is none the less true that some very interesting conclusions might be drawn from even a casual checking off of the *Tribune's* millionaire list if the checking were done for each community by persons well informed as to the principal public benefactions and the general reputation for liberality of their wealthiest neighbors.

HOW THE CLEVELAND LIST CHECKS UP.

As a matter of experiment -- not for statistical purposes but in order to gather up certain impressions -- such a checking off has been attempted for a selected list of cities within the past month, for the use of this magazine. Let us, for example, turn to the list for the city of Cleveland. Sixty-eight fortunes are listed by the *Tribune's* compilers as making up the total of Cleveland's millionaires. The lists are returned to us checked in such fashion as to show that the persons who passed upon them considered twenty-eight of the sixty-eight fortunes as in the hands of owners who were, to a moderate extent at least, mindful of their public opportunities and duties.

It is interesting to observe how many of these have rallied about Cleveland's principal educational institution, the Western Reserve University, which includes Adelbert College, the Case Scientific School and other departments. Mr. Leonard Case was a representative Cleveland philanthropist, whose name is perpetuated by the Case Library and the Case School of Applied Science. Mr. James F. Clark gave one hundred thousand dollars to the Woman's College of the Western Reserve University. Mr. W. J. Gordon will also be remembered as the giver to his city of the Gordon Park, valued at one million dollars. Mrs. Samuel Mather and her late husband have been large givers to local institutions. Mr. John L. Wood has within a few weeks given one-quarter of a million dollars for the medical college of the Western Reserve

University, this bringing his total offerings to that institution up to some four hundred thousand dollars. Doubtless Cleveland's millionaires have done very meagre things for their city compared with what they might easily have done if fully alive to their obligations. But it is evident from a glance at the notes on the margin of the lists returned from Cleveland that very much which ministers to the best welfare of the people of the city would be blotted out if the gifts made by people of wealth were to be annihilated.

CINCINNATI'S BENEFACTORS.

The Cincinnati list enumerates some seventy fortunes worth one million dollars, and is returned with twenty-one checked as belonging to comparatively liberal givers for beneficent public purposes. It is well worth while to note in connection with Cincinnati the extent to which a few generous and broadminded men of wealth may affect, by the character of their benefactions, the nature of the social and [54] educational development of their community and the distinctiveness of its reputation. Thus Cincinnati has come to be famous as a musical and an art centre, and its advancement in these directions is largely due to the gifts that its public-spirited citizens have made. Mr. Charles West, of Cincinnati, during his lifetime gave three hundred thousand dollars to found the Art Museum, and this has been largely supplemented by the well-known Longworth family and their descendants.

The largest gifts ever made to the city, perhaps, were those of Reuben Springer, who gave Cincinnati its famous Music Hall, its College of Music, and the allied enterprises, which include schools of practical art. The Cincinnati Exposition, opened two decades ago, and continuing from year to year, was a most fruitful factor in the industrial and artistic development of the city, and was an enterprise closely allied with the development of the College of Music, the Art Museum and other beneficent institutions. The Cincinnati University was the gift of Mr. McMicken, who left it nearly a million dollars. Henry Probasco's gift of the magnificent "Tyler Davidson Fountain" gave a distinct impulse to public spirit among the rich men of Cincinnati.

To Mr. Andrew Erkenbrekter, another generous millionaire, is due Cincinnati's famous Zoological Garden. Mr. Groesbeck has given a large endowment to secure free music of a high order in the Burnett Woods Park. Mr. Emory has built and endowed a hospital for children. And so the specifications might be continued.

PUBLIC SPIRIT IN ST. LOUIS.

St. Louis is credited in the *Tribune's* list with some forty-five millionaires, and only ten of these are checked off by our correspondent as men of pronounced and well-known liberality. But St. Louis, nevertheless, owes much to the gifts of its men of wealth. The most conspicuous philanthropist of St. Louis was the late Henry Shaw, who twenty years before his death gave to the city the beautiful Tower Grove Park, which he himself laid out and cared for. He founded the world-famed "Shaw's Garden" -- undoubtedly the finest botanical garden in America -- which, upon his death at the age of eighty-six, two years ago, he left to the city together with his fortune of two or three million dollars for its maintenance. He founded a chair of botany in the Washington University at St. Louis, the incumbent of which is the superintendent of the garden. Nowhere else in the world is there such a university foundation for work in the field of botanical study. The beneficence of St. Louis has rallied largely about the Washington University, and Mr. George E. Leighton, President of the Board of Trustees, has done noble work in his efforts, personal and financial, for that institution.

DETROIT'S GOOD MILLIONAIRES.

Detroit is credited with forty-two millionaires, of whom at least a dozen are counted by our Detroit informant as men who are making public-spirited use of their wealth. At the head of the Detroit list is General R. A. Alger, who is reported as having just now completed his annual distribution of gifts to city institutions and hospitals and other worthy objects of charity. It is said that ever since his business has been at all profitable he has annually devoted at least 20 per cent. of his entire income to worthy benefactions. Mr. D.M. Ferry is accounted a

very large and generous giver, and his name is ranked with that of General Alger among the benevolent millionaires of Detroit. Senator James McMillan is also credited with having made several large endowments to educational and charitable institutions within the past few years. Mrs. Thomas W. Palmer, whose husband is President of the World's Fair Commission, is a Detroit lady of large benefactions, and her husband has recently given very valuable property to the city for park purposes, and is said to be about to build and endow, at a cost of at least half a million dollars, an Industrial Home for Women.

Late in January, Mr. Hiram Walker's gift of \$125,000 to the Children's Free Hospital of Detroit is announced, and Colonel Hecker, another millionaire, makes a liberal gift to the Harper Hospital.

Among Detroit men worth less than a million, though very rich, was ex-Senator Baldwin, of Detroit, who died a few years ago and whose practice it had been to give away large sums in charity each year. Another Detroit man who gives with an unstinted hand is, Mr. James E. Scripps, the well-known owner of newspapers, who is proprietor of the *Detroit Tribune* [55] and the *Detroit Evening News*, and of afternoon newspapers in Cincinnati, Cleveland and St. Louis. He has just completed Trinity Reformed Episcopal Church in Detroit entirely at his own expense, and it cost him not less than one hundred thousand dollars. He gave seventy-five thousand dollars towards the establishment of the Detroit Museum of Art, and it is known that he has in hand other public benefactions in the nature of parks and various institutions. Detroit evidently has benefitted very materially from the gifts of her millionaire citizens, and probably even more from her rich citizens who rank below the million line.

ST. PAUL AT LEAST HAS JAMES J. HILL.

Our millionaire record," says the fully competent correspondent who checked off the St. Paul list, is not good. Those I have checked, and have not specially noted are simply less stingy

than the rest." The *Tribune* list credits St. Paul with twenty-eight millionaires, and our correspondent checks nine names as distinctly better than the remaining nineteen. It is only fair to say as regards the young cities of the West that their rich men are so deeply involved in enterprises upon which they have not as yet fully "realized," that their largest benefactions must necessarily be somewhat deferred. St. Paul, however, has several millionaires of long standing whose lack of public spirit is a deplorable misfortune for the community in which they live.

Mr. James J. Hill, President of the Great Northern Railway, is probably the richest man in the Northwest. His means have, however, been largely absorbed in the development of his vast undertakings. Nevertheless, he has managed to make his liberal disposition fully manifest, his largest gift being approximately one million dollars for a Catholic Theological Seminary now in process of erection under the eye and auspices of his warm friend, Archbishop Ireland. Mr. Hill has also been a liberal giver to Protestant institutions, and he has shown his good will towards the neighboring city of Minneapolis by placing in its public library a number of very valuable paintings by modern European masters, at a cost of perhaps fifty thousand dollars. Such a graceful act has value, as an example to other rich men, far beyond the amount of money actually involved. Mr. Hill is a man from whom the Twin Cities and the Northwest may yet expect much well placed benefaction.

HOW MINNEAPOLIS MEN PULL TOGETHER.

Minneapolis carries in the *Tribune's* directory the names of forty-four men who are credited with having accumulated more than a million dollars. Our Minneapolis correspondent checks off fourteen names. In Minneapolis there has been a marked disposition on the part of men of wealth to contribute from their private pockets to the promotion of official or semi-official institutions for the welfare of the community. Thus the State University has, among the group of buildings erected with the tax-payers' money, its handsome Pillsbury Science Hall, which is the gift of ex-Governor John S. Pillsbury, and which cost one hundred and

fifty thousand dollars. The State University has been the recipient of some other gifts, and has reason to expect that the rich men of Minneapolis will, in the future, do still more for it. The Pillsbury family have shown a strong benevolent impulse, Mr. George A. Pillsbury having contributed to the Pillsbury Academy at Owatonna (Minn.) gifts [56] aggregating perhaps one hundred and fifty thousand dollars, besides his gift of a soldiers' monument to South Sutton, New Hampshire, the Free Library he built and endowed at his old home, Warren, New Hampshire, and the Margaret Pillsbury Hospital at Concord, New Hampshire. Mr. Charles A. Pillsbury is a general and constant contributor to various deserving objects, his large-mindedness being well shown by the profit-sharing plan which he pursues in his great milling enterprises.

The Minneapolis Public Library building, which represents an investment of about half a million dollars, well illustrates the good Minneapolis practice of joining public and private contributions. Thus the Library building has been paid for in about equal parts by local taxation and by the large gifts of men of wealth, conspicuous among whom are Mr. T.B. Walker, Mr. Thomas Lowry and Mr. Samuel C. Gale. The Harrison family of Minneapolis have been large givers, and Hamline University, the Methodist college of the vicinity, has received from them probably more than two hundred thousand dollars. The late Richard Martin left half a million dollars to the sheltering Arms Hospital and some other benevolent institutions. Mr. L. F. Manage, some two years ago, sent, at his own expense, an elaborately equipped exploring expedition to the Philippine Islands. The late C. C. Washburn, who built the astronomical observatory at Madison, Wisconsin, during his lifetime, and made many other public gifts of large amount in that State, left some four hundred thousand dollars for the Washburn Memorial Home for Orphan Children in Minneapolis. Generally speaking, the Minneapolis Men of wealth nearly all expect, sooner or later, to even their accounts with their fellow-men by some generous public gift.

CALIFORNIA'S MILLIONAIRE PHILANTHROPISTS.

California not only has a long list of men whose wealth is counted by millions, but its rich men are, in an unusually high proportion, the multi-millionaires. Most of them are accredited to San Francisco; although their possessions are scattered lavishly up and down the Pacific Coast, and many of them live as much in New York or Europe as in California. In view of the ease with which most of their fortunes were made by the appropriation of the gifts and wealth of nature, and in further view of the necessity of public institutions in that new region which has attracted population so rapidly, the California millionaires have not been reasonably mindful of their clear obligations. Some notable exceptions, however, are to be recorded.

The name of James Lick is known and honored wherever Knowledge and Charity are valued. He gave away his entire great fortune upon works of public benefit for his fellow Californians. His gifts included, besides various smaller ones, the world-famed Lick Observatory with its mammoth telescope on Mount Hamilton, and its great endowments; the Lick Public Baths of San Francisco, and the Academy of Science building, which forms the centre for the cultivation of scientific tastes in that city.

In Mr. Adolph Sutro, also, San Francisco possesses a millionaire of the type for whose multiplication the whole country might well make prayer and supplication. Mr. Sutro, among other things, built the famous Sutro Heights, a public garden containing statuary and many artistic adornments, besides a fine building which houses an art gallery and a marine museum. His philanthropy is systematic and thorough-going.

THE LELAND STANFORD, JR., UNIVERSITY.

The largest and now the most widely-famed of California millionaires' gifts to the public is the Leland Stanford, Jr., University, which a few short years ago was a mere conception, but which to-day is a working reality. The value of Senator Stanford's gifts and endowments for

this University is variously estimated at from ten millions to twenty millions of dollars. The power of wealth has perhaps never been so vividly illustrated in all the history of mankind as in this magical creation of a great university on the broad California fruit-ranch. The wise men declared that the thing could not be done. Some were sure that money could never make a true University at that distance from Oxford and Harvard, short of a [57] hundred years for the development of the country. Leland Stanford, the plain and unpretentious man of affairs, thought otherwise. He has created an institution which will minister in countless ways to the civilization of the Pacific Coast. Far from injuring the University of California by its nearness and its superior wealth, the Stanford University will be of the greatest benefit to its neighbor-stimulating, as it is sure to do, a more generous public and private support for the older institution at Berkeley, and joining with it to give a greater prominence to California as a new world's centre for the higher education.

GIFTS TO SAN FRANCISCO AND THE STATE UNIVERSITY.

Among the benefactors of California should be mentioned Dr. Cogswell, who has given San Francisco a school for polytechnic teaching at a cost for building and endowments of perhaps a million dollars, the whole of which he has deeded in trust to the City of San Francisco. Dr. Cogswell has also erected public drinking fountains in San Francisco and in other large cities.

The State University at Berkeley has been so fortunate as to have received a number of important gifts from San Francisco millionaires, among them Mr. Michael Reese, who gave \$50,000 to the University Library, and has given much other money to public charities and institutions. Mr. D. O. Mills, a well-known Californian, gave \$75,000 to found a Chair of Philosophy in the University, and has spent several hundred thousands of dollars in founding an art gallery in the City of Sacramento, the capital of the State.

One of the most important recent gifts is that of Mr. Edwin F. Searles of one million dollars to the San Francisco Art Association for a new building, which, while serving the aesthetic interests of the metropolis, will also be an adjunct to the State University in the neighboring town of Berkeley. The location of several departments of the State University in San Francisco may in the course of time have the result of placing the larger half of the institution there rather than at Berkeley. Thus Mr. S.C. Hastings has given \$100,000 to found the Hastings College of Law in San Francisco, as an adjunct department to the State University. Mrs. Phoebe Hurst has recently made large provisions in the form of scholarships for women in the State University; and, in short, the disposition to maintain that prominent institution at a high point of efficiency has never manifested itself so strongly as since Mr. Stanford made his endowment at Palo Alto.

OTHER CALIFORNIA BENEFACTIONS.

The City of Oakland, San Francisco's great residence suburb, owes much to the benefactions of Mr. Anthony Chabot, who has given it the Chabot Observatory at the cost of a quarter of a million, the Fabiola Hospital, some free kindergartens and a Home for incurables, all of which he has freely endowed, and who has also given generously to many religious and philanthropic causes. Mr. Henry D. Bacon and Mr. A.K.P. Harrmon are San Francisco men who have made large gifts to the State University. Dr. R.H. McDonald has given large sums for the promotion of temperance and various religious interests. Capt. Chas. Goodall has made extensive endowments of minor California educational institutions. Mr. Samuel Merritt has not only given about half a million dollars to an Eastern college, but has bestowed a similar sum upon the Samuel Merritt Hospital in Oakland. Miss Virginia Fair has endowed hospitals and Catholic institutions. The late Michael J. Kelley gave large bequests also to the Catholic Church and to orphan asylums both Protestant and Catholic. There are doubtless other large and generous gifts which might readily be added to those here specifically mentioned.

Thus if the institutions which the gifts of Californian millionaires have created for the benefit of the people of California were to be eliminated, there would disappear a great aggregation of admirable public establishments, beginning with the notable free kindergartens so generously maintained by the rich women of San Francisco, and including manual training schools, art schools and galleries, scientific museums, hospitals and orphanages, and practically all the college and university facilities that exist in the State. Where so much has been accomplished so easily, what might not California possess and become if all her millionaires should show the disposition of a Lick, a Sutro or a Stanford?

WHAT BALTIMORE'S RICH MEN HAVE DONE.

To return from the Pacific to the Atlantic Coast, we find about fifty-five large Baltimore fortunes [58] listed as equal to a million or more. The Baltimore millionaires, generally speaking, are not multi-millionaires, and their wealth has been accumulated slowly by old-fashioned business care and sagacity. The large endowments at Baltimore of a Peabody, a Johns Hopkins and an Enoch Pratt, have already been mentioned. The Baltimore list is returned from competent advisers in that city with just one-half of the names checked off as belonging to men of a recognized disposition to be generous, whether they have actually made very large gifts or not. The most noteworthy of recent benefactions at Baltimore is Miss Mary E. Garrett's check for \$350,000 to the trustees of the Johns Hopkins University, to complete the sum which was stipulated as necessary to open the Medical College of the University to women. The Garrett family have made other public gifts in the line of hospitals, public monuments and education.

One of the most beautiful public gifts ever made to Baltimore came from Mr. W. T. Walters, the famous art collector, who gave the Barye bronzes in Mount Vernon place, and whose magnificent collection of paintings -- the finest private collection in America, it is commonly said -- may not improbably be made over by him, either in his lifetime or at his death, to the city of which he is a foremost citizen.

It is not, in the long run, the money value of a public gift which precisely measures its usefulness. The spirit, purpose, and timeliness of a gift count for much. Thus the Baltimore merchants, who came to the relief of the Johns Hopkins University to tide it over the period when the Baltimore and Ohio railway's financial troubles cut off the University's income, rendered to the cause of the higher education in America a service which, at some other time, ten or twenty times the amount they paid could not have equaled in value. A few men of the spirit of Mr. Eugene Levering, of Baltimore, would suffice to save the credit of the rich contingent in any community.

THE PRACTICAL SIDE OF "BROTHERLY LOVE."

The City of Brotherly Love has much wealth, more of which is in family estates which have been accumulating for a long time than in the form of very recent acquisitions, made by speculation or the rapid expansion of values. Philadelphia's quiet, unostentatious character is reflected in the forms of its philanthropy. A strong and steady flow of systematic benevolence for public causes in all parts of the world has always flown from the pockets of the rich people of the Quaker City. The large gifts for the relief of the famine-stricken Russians last year which emanated from Philadelphia were characteristic of the place, while it was equally characteristic that Philadelphia should have desired to send along with these gifts a protest to the Czar against the persecution of the Jews. Philadelphia is the home of the Indian Rights Association, and Mr. Herbert Welsh, possessing a large inherited fortune, gives his whole time and much of his money to the cause of the red man on the frontier. Great sums have also gone out of Philadelphia for the education of the colored race in the South. It was Philadelphia money that equipped the recent Peary Arctic Expedition.

Thus Philadelphia's bounty loves to search out the dark and hidden places of the earth, and the more remote these places are, the stronger is their hold upon the sympathy of the professional and traditional philanthropy of William Penn's descendants and successors. But

next to Indians, Africans, Esquimaux and starving Russian Jews beyond the Volga, Philadelphians love their own city and they do not altogether neglect it. The best and wisest of the Philadelphia philanthropies is the noble Drexel Institute, which will afford a centre of instruction for the sons and daughters of the plain people of Philadelphia. Other Philadelphians besides Mr. Drexel have given much for local educational purposes, and the various departments of the University of Pennsylvania have a long list of benefactors on their roll of honor. Mr. Charles C. Harrison, Chairman of the Ways and Means Committee of the University, is particularly to be commended for his gifts of money and of effort. Mr. Wharton, founder of the Wharton School of Finance and Economics of the University, should not be overlooked. Mr. Lenning's three-quarters of a million for the scientific department of the University was a notable gift. Mr. Henry C. Lea is another representative Philadelphian who has given largely for local library and University purposes. The late George Pepper left more than a million dollars to libraries, schools and charities, as also did the late Calvin Pardee. Mr. John B. Stetson has founded the useful Stetson Institute; another rich man has built the Wagner Institute. Mr. I. Z. Williamson founded the Williamson Free School of Mechanical Trades and numerous rich Philadelphians have built up and are generously adding to the endowment of such local institutions as the Academy of Fine Arts, the Academy of Natural Sciences, the Philadelphia Library, the Apprentices' Library and the Franklin Institute. The Ridgeway branch of the Philadelphia Library has an estate of about one million dollars, the bequest of the late John Rush.

As Baltimore has, in the Abell family, its millionaire newspaper proprietors of generous proclivities, so Philadelphia has in its best known citizen, Mr. George W. Childs, a wealthy philanthropist who is honored everywhere, and in William M. Singerly, another newspaper millionaire of pronounced public spirit. It must suffice merely to mention Mrs. Matthew Baird's gifts to the Academy of Fine Arts, Colonel Bennett's to the Women's College of the University and to the Methodist Hospital, Mr. George Burnham's large gifts for religious objects, Mr.

Bucknell's endowment of the institution which bears his name, Mr. Coxe's gifts to Lehigh and to various schools and churches, Mr. Clothier's to Swarthmore College, and Mr. Wanamaker's to various local objects. When these names are mentioned, there remain others probably as well entitled to a place in the roll of honor for philanthropy and public spirit.

[59] HAS BOSTON NOT ONE GREAT PUBLIC BENEFACTOR?

Our Boston correspondent is not complimentary to the rich men who breathe the atmosphere of that favored and superior locality." This city," he declares," will never sustain your thesis as to the generally liberal disposition of American millionaires of the present day. Our Boston millionaires give money when it is solicited (properly), and they all include in their wills some bequests to Harvard and to the Massachusetts General Hospital. That is all. Of great public benefactions we have none in Boston. The only large public gift in this vicinity has been made by a millionaire citizen of Cambridge, Mr. Rindge, who gave that city a magnificent city hall, a public library complete, and an industrial school."

This correspondent does not fail, however, to mention with warmth the gratitude that is due to Mrs. Hemmenway for her almost countless charities and broad and wise benefactions for the encouragement of science and the promotion of diverse public enterprises. He commends Mr. H. L. Higginson for having instituted the Boston Symphony Orchestra, but adds that the orchestra is now a very lucrative investment rather than a public benefaction. There was once a generous man named Lowell in Boston who endowed the Lowell Institute with a great scheme of free courses and lectures. His good work still lives on. Mrs. Quincy A. Shaw has founded and maintains a number of free kindergartens, and Mr. Daniel S. Forbes, who publishes the *Youth's Companion*, is very generous to Baptist churches and causes. Our correspondent mentions as a typical case a Bostonian who "occasionally gives his distinguished ancestor's autograph to the Massachusetts Historical Society."

ELSEWHERE IN MASSACHUSETTS.

Massachusetts is charged with a long list of millionaires in the *Tribune's* catalogue --some three hundred in all -- and considerably more than two hundred of them are in the Boston list. It is to be regretted that they cannot give a better account of themselves. The rich men of the smaller Massachusetts cities would doubtless make a more commendable showing for philanthropy. Thus the newspapers of January 19, reporting the death of Mr. Horace Smith, of Springfield, add that his entire great fortune has been left to a class of charitable and philanthropic objects which he fostered in his lifetime. Mr. Jonas G. Clark, of Worcester, several years ago founded, and now maintains unaided, the Clark University; and other Worcester millionaires have made creditable gifts. However badly the millionaire list of Massachusetts may seem to check off, it is not to be forgotten that among people of smaller means there is New England a constant, systematic appropriation of money out of current income for educational, religious and benevolent causes, at home and abroad, such as no other part of the world can equal.

GOTHAM'S ELEVEN HUNDRED MILLIONAIRES.

The State of New York, exclusive of New York City, is credited with 405 millionaires, of whom about one hundred and seventy-five are assigned to the Brooklyn list. The New York City list is compiled separately and contains 1108 names. Manifestly it, would not be an easy task, nor indeed would it be, either encouraging or advantageous, to attempt a sifting of the liberal from the selfish millionaires of Gotham. A few names stand out in brilliant contrast with the great majority by reason of unfailing philanthropy.

Of the largest New York fortunes it can only be hoped that ultimately they may fall into the hands of men who will have both the purpose and the intelligence to use them as levers for the development and the progress of the country, and particularly of New York City. For of all the great world-centres of our age, New York City is at once the richest, as regards private

purses and the meanest and poorest in its educational and aesthetic facilities and its possession of notable and serviceable institutions for the popular benefit. There are in New York colossal estates, accumulated by the simple process of sitting still and permitting the toilers of the metropolis to enhance the value of real property. Obviously, of all the great fortunes of America, these are the ones which morally owe most to the promotion of public causes. The Vanderbilt fortunes have in different directions [60] exercised a large and intelligent beneficence, and there is reason for the hope that they will, with more and more system and purpose, be devoted to the service of the metropolis and the country. Mr. George Vanderbilt, than whom perhaps no man could be less desirous to pose as a philanthropist, is in quiet ways exercising extensive and wise beneficences.

Mr. Cornelius Vanderbilt's great gift to Yale has been announced within the past month. Vanderbilt University in Tennessee has been largely endowed by the family.

The rapid development of the Metropolitan Museum of Art to the point where it is really a magnificent and instructive collection of art objects shows how easily the rich men and women of New York can provide an institution for the instruction and delight of the people when once the disposition is aroused. The Natural History Museum- is another such object lesson. The beneficence which has recently given enlargement to Colonel Auchmuty's Trade Schools ought to incite fifty rich men to found as many educational institutions of a similar kind for the boys and girls of the metropolis. If only the millionaires of New York would give back to their city and country a small fraction of the wealth which the city and the country have poured into their inflated coffers, many of the darkest problems that now confront and alarm thoughtful and observing men and women would already be half solved.

When, at the day of judgment, these multi-millionaires of Gotham stand up to be questioned as to what use their lives ever were to their fellow-men, it is just possible that some

cross-questioning archangel may remark to each one in turn: "There were more than ten thousand liquor saloons in New York City in the days when you lived there, and there were many hundreds of still more harmful places of resort. Why did you not see to it that there were at least as many free kindergartens as drinking saloons in your city?" There ought, within the next five years, to be established in New York not a few dozen more kindergartens, but ten thousand of them -- free as the air to every child whose parents can be induced to send it. And those kindergartens ought not to be established by the taxation of the people, but out of the surplus holdings of New York's thousand millionaires. They possess an aggregate of perhaps ten thousand millions of dollars. This sum has been taken from the social wealth produced by the united efforts of the mechanics, the farmers, the laborers and the toilers of every calling in all parts of the country, of which New York is the commercial metropolis. And when the ten thousand free kindergartens are established and fully endowed, there will be thousands of other institutions and objects of public benefit, which the millionaires of New York ought to find it their pleasure and privilege, as well as their duty, to provide.

While Stead and Shaw urged greater philanthropic commitment, they neither promoted a particular philanthropic agenda --favoring some causes over others -- not suggested new vehicles for giving. Evidently the reformers did not yet grasp the extent to which the huge scale of modern industrial wealth would require entirely new approaches to giving. While such approaches were implicit in Carnegie's "Gospel," especially in his rejection of almsgiving in favor of using philanthropy to empower those who would rise, even Carnegie himself would not move towards "scientific" giving directed at the root causes of social and economic problems until after 1900.

REFORMING CHARITIES LAW

These articles were part of a determined effort by conservative reformers to persuade America's wealthy --especially the newly rich, who had no clear understanding of philanthropy -- to take on broader responsibilities. It was no accident that they appeared in the closing months of the struggle to reform New York's charities laws. Before 1893, New York --the state which boasted the greatest concentration of wealth --had limited the capacity of testators to leave money to charity and the ability of eleemosynary organizations to receive donations and bequests. In the late 1880s, the defeat of two efforts to bequeath major sums of money to charity -- the failure of the Tilden Trust in 1887 and of the one and a half million dollar Fiske bequest to Cornell University the following year -- made New York a lightning rod for those concerned about the impact of new wealth on American society. With the legal environment changed to favor philanthropic giving, the challenge became -- as these articles make clear -- persuading the wealthy to take up the challenge.

Although the highly technical legal issues underlying the Tilden and Fiske cases differed, in terms of their broad political implications, they have important similarities.

In both, the body of laws intended to limit the wealth and power of private institutions, adopted by New York State during the Jacksonian era, permitted litigious relatives to defeat major charitable bequests. It also appears that the motives underlying these litigations, though certainly self-serving, also had political elements. David B. Hill, a major figure in the anti-Tammany faction of New York's Democratic party was involved in both cases. Unfortunately, neither the press of the period nor Hill's own papers illuminate whether his motives were self-serving or based on a principled opposition to private philanthropy.

Tilden's biographers, who were familiar with the nuances of New York politics of the era, not only suggest that the motives were entirely self-serving, but also that Hill had "fixed" the case to ensure the defeat of the trust.

"The Broken Will," from Alexander Clarence Flick, *Samuel Jones Tilden: A Study in Political Sagacity* (New York: Dodd, Mead & Company, 1939), 510-518.

In 1873, while planning a trip to Europe, he [Tilden] instructed J. P. Sinnott to draft his first will, but it was destroyed when A. H. Green drew up the second will which still survives and presaged the third and final document. There was much speculation as to what he would do with his large fortune. Representatives of numerous causes sought to influence his decision and friends proffered advice. Tilden himself gave serious thought to the problem of his wealth and felt that "a rich [511] man is primarily a trustee of society."²⁹⁸ While working out the terms of his last testament, his secretary called attention to \$74,000 placed in his hands for investment by Miss Catherine Pierson, between 1849 and 1868. So wisely had the money been handled that it amounted to \$270,000, which was sent to her representative.²⁹⁹ He promised Mrs. G.W. Smith that her husband would be so well cared for that he would never "work for anybody else."³⁰⁰ The will of 10,000 words in 43 sections was executed on April 23, 1884. As a lawyer he concerned himself with wills now and then, the most notable instance being that of Martin Van Buren, but he did not profess to be an authority on the law in such matters.

²⁹⁸ Brooklyn Union, Aug. 12, 1886.

²⁹⁹ *Life*, II, 380. Miss Pierson was his mother's sister.

³⁰⁰ Mrs. G. W. Smith, Ms. Notes.

Cautious as usual, he turned the long document over to Charles O'Connor for examination. After several conferences with Tilden and Bigelow, O'Connor approved the will as "wise and absolutely valid," but advised a few changes. He praised the provisions safeguarding female relatives against any masculine influence, for "if the money were left to them outright . . . some man . . . would either kiss it out of them or kick it out of them."³⁰¹ However, he suggested that it be submitted to James C. Carter, who gave it a hasty examination and returned it with assurance that it was good law.³⁰² Procrastination and illness prevented Tilden from having the points raised by O'Connor definitely settled, so the will stood as written with a few minor alterations.

On the Monday following the funeral, August 9, the will was read in the library at Graystone by James C. Carter, in the presence of the three executors; Mrs. Mary B. Pelton and her granddaughter, Laura A. Pelton; six children of Henry A. Tilden -- two nephews and four nieces; and the adopted daughter of Moses Y. Tilden, Adelaide E. McGuire Buchanon. It made the following provisions:

1. That George W. Smith, Andrew H. Green, and John Bigelow be executors and trustees at an annual salary of \$5,000 each in lieu of commissions and charges. In case of death the survivors were empowered to choose successors, thus making the board self-perpetuating. From Smith's salary was to be deducted his pay as private secretary and as an officer in two iron companies.

2. That Mrs. Mary B. Pelton during her life should have the use of [512] the house at 38 West Thirty-Eighth Street free and clear, and also the interest on three life trusts of \$50,000 each. After her death the house and one of the life trusts should go to her granddaughter, Laura A. Pelton; the interest on a second life trust was to go to Caroline B. Whittlesey, a niece of Tilden; and the third life trust was to revert to the Tilden estate.

3. Two life trusts of \$25,000 each were set aside for Lucy F. Tilden, widow of Moses; and after her death one of the life trusts to 90 to her adopted daughter, Adelaide E. Buchanon,

³⁰¹ Tilden Papers, G. W. Smith to *Times*, Sept. 19, 1916.

³⁰² Mrs. G. W. Smith, "The Tilden Will and its Vicissitudes."

if not otherwise disposed of. To Mrs. Buchanon³⁰³ "was conveyed \$5,000 in loans to her husband and the interest for life on \$20,000 in bonds of the Oregon Short Line Railroad."

4. The sum of \$50,000 to go as a life trust to Susan G. Tilden, widow of Henry, and upon her death to her daughter Henrietta A. Swan.

5. The interest on 100 shares of the Cleveland & Pittsburgh Railroad to go to his niece, Caroline B. Whittlesey; and after her death to her heirs. To her was also assigned the stock in the Delphic Iron Company, the debts owed Tilden by her husband, and enough cash to make a life trust of \$50,000.

6. A life trust of \$50,000 and 100 shares of the Cleveland & Pittsburgh Railroad went to his niece, Henrietta A. Swan.

7. The heirs-at-law of Moses and Henry were requested to convey to their respective widows the Tilden properties for life so as to keep the Elam Tilden property at New Lebanon, N.Y. intact during the lifetime of George H. and Samuel J. Tilden, II.

8. His nephews George H. and Samuel J. Tilden, II, were released from a loan of \$34,000 and a mortgage of \$33,000, and from certain notes given to Catherine H. Pierson, which he endorsed to save his mother from doing so. For each of these two brothers a special trust of \$75,000 was created, and on their written request loans to their father amounting to \$300,000 were to be canceled.

9. Special trusts of \$150,000 each were to be set up for his two unmarried nieces, Ruby S. and Susan G. Tilden.

10. A trust of \$100,000 was created for Anna J. Gould, his attendant, who was given power to dispose of half of that sum; the sum of \$500 a year for life was to be paid to Henrietta Jones of Monticello; the sum [513] of \$5,000 was given to John J. Cahill, a secretary; not over \$500 a years was to go to Mrs. James P. Sinnott for five years to educate her children; and ten employees were to receive from \$500 to \$1,000 each.

³⁰³ The daughter of Tilden's dentist, Dr. B. F. McGuire, at whose house Tilden had rooms for awhile. He settled Dr. McGuire's estate and after Mrs. McGuire's death persuaded his brother Moses to adopt the eight-year old daughter.

11. His "friend" Marie Celeste Stauffer, of New Orleans was have for life the income on \$100,000 in railroad bonds free "from control of any husband; "and she had power to dispose of the principal by will."

12. The sum of \$50,000 was given for a Library and Free Reading Room in Yonkers; \$80,000 for a similar institution and a school for training girls in New Lebanon; and the residue of his estate was to be used to establish and maintain a like institution in New York City and for "such charitable, educational and scientific purposes" as the executors might judge best for "the interests of mankind." His books were left to be given to libraries or disposed of. The sum of \$10,000 was care for the New Lebanon Cemetery and a like amount was to be applied according to instructions. A suitable monument was to be erected to his memory; his public papers were to be published; and the executors were authorized to "burn and destroy any of my letters, papers or other documents, whether printed or in manuscript which in their judgment will answer no useful purpose to preserve."

13. The executors were empowered to manage the trusts and funds as they "shall deem advisable" until all the terms of the will were met or until the death of his niece Ruby S. Tilden and his grand-niece Susie Whittlesey. And any heir who under any pretense opposed the probate of the will should lose all share in the estate.³⁰⁴

These bequests show that Tilden was generous with his relatives, giving them approximately \$1,400,000 while outsiders were bequeathed only \$225,000. George H. and Samuel J. Tilden, II, received the largest share -- a total of \$567,000 -- although all but \$75,000 each was in canceled debts. Particular care was taken to safeguard the Tilden fortune from speedy disintegration by setting up life trusts and making provision for its inheritance by the second and third generations. The outstanding significance of the will is that through it Tilden intended to devote about two-thirds of his wealth for cultural and scientific purposes. The Albany *Argus* on August 8 reported that George H. and Samuel J. Tilden, II, asserted that the will would not be broken,³⁰⁵ but after [514] it was read the next day some members of the family "immediately manifested their bitter disappointment that larger sums were not left to them . . . and announced their intention to attack it."³⁰⁶ They thought of engaging judge Charles F. MacLean, but, upon learning of his large fee, they had Robert D. Buchanon, husband of the

³⁰⁴ Will printed in *Life*, II, Appendix D, 420; Hun., *Supreme Court Reports*, LXI, 231.

³⁰⁵ August 9, 1886.

³⁰⁶ Mrs. G. W. Smith, Ms. Notes.

adopted daughter of Moses, obtain a loan of \$50,000 from Robert G. Dun of the well-known mercantile agency. This sum was put in the hands of George H. Tilden for action. So distrustful were the seven heirs of one another that each engaged an attorney. Judge E. Countryman and Joseph H. Choate each received \$150,000 for his services, the latter serving as the leading counsel of the contesting heirs and also representing the interests of Marie Celeste Stauffer. Lyman D. Brewster got \$50,000; and no one seems to know how much Delos McCurdy, a close friend of Henry A. Tilden was paid. James M. Hunt appeared for the Yonkers Library; New York City had its own attorney, and the executors employed Carter and Ledyard. The situation was complicated by the fact that banks from Fishkill to Albany expected to have their loans to the tottering firm of Tilden & Company repaid out of the Tilden fortune. John Bigelow and G. W. Smith, executors, sought Governor Hill's advice about the will.³⁰⁷

On the day the will was probated at White Plains, October 10, 1886, George H. and Samuel J. Tilden, II, nephews, contested its validity in the Supreme Court of New York County, special term, through Vanderpoel, Green and Cuming, attorneys.³⁰⁸ Bigelow states that these nephews were "largely in debt" and were pressed by their creditors to take that action.³⁰⁹ Their counsel claimed that the provision for libraries at New Lebanon and Yonkers, and the 35th clause of the will were too indefinite, since they gave the executors authority to use the residue of the estate for "such charitable, educational and scientific purposes" as they might deem "beneficial to the interests of mankind." The case came up for trial in November, 1888, in a special term, with Joseph H. Choate, L. D. Brewster and Delos McCurdy counsel for the heirs; and James C. Carter, Lewis C. Ledyard, Daniel Rollins, George F. Comstock and Smith M. Weed representing the executors.³¹⁰ In January, 1889, justice [515] Lawrence decided that the contested clause was valid.³¹¹

The case was then appealed to the general term of the Supreme Court-Smith M. Weed now joining the heirs as counsel-where the decision of justice Lawrence was reversed on November 8, 1889, by a vote of two to one. The executors then carried the case to the second division of the Court of Appeals where on October 27, 1891, by a vote of four to three, it was decided that the 35th clause was invalid, thus reversing the lower court. Judge Brown wrote the major opinion that the "fatal defect" of the will was that "The will of the trustees is made

³⁰⁷ Hill Papers. John Bigelow to D. B. Hill, Sept. 13, 1886.

³⁰⁸ Mrs. G. W. Smith, Ms. Notes; *Bulletin* of the New York Public Library. The will was also probated in England.

³⁰⁹ *Life*, II, 361.

³¹⁰ Mrs. G. W. Smith, Ms. Notes.

³¹¹ *New York State Reports*, XVIII, 752.

controlling, and not the will of the testator.³¹² The motion of the executors on November 30 for an opportunity to reargue the case was denied, also by a divided vote. Thus the Tilden will was broken. This division of the Court of Appeals was composed of judges of the Supreme Court temporarily designated by Governor Hill to assist in clearing its clogged calendar. Angling for votes for the United States Senatorship, Hill promised Samuel J. Tilden, II, who was on his military staff, that he would "fix it" so the family and creditors would "succeed in what they wanted." Hence he arranged to have the case brought before the second division, on which sat two judges "who would positively vote against the validity of the Tilden will and one other who, he thought, might." The last named judge was Alton B. Parker, whose vote turned the decision "against the validity of the will." Before this final settlement of the legality of the will, G. W. Smith suggested to Smith M. Weed that his client, Mrs. Laura P. Hazzard, might be persuaded to compromise with the executors, which she did before the final decision was rendered.³¹³

The Tilden will contest, known as *Tilden vs. Green*, attracted wide attention in both legal and popular circles, first because the will had been drawn by a preeminent lawyer who presumably knew what would and what would not stand a test in the courts; and, secondly, because of the large fortune involved. By the breaking of the will New York City stood to lose most. It was generally said that in almost any other state of the Union the laws would have prevented such a decision based on an ancient Elizabethan statute. It was commonly reported that politics played no small role in the outcome of the contest. The [516] rumor persisted that creditors, bankers and interested friends raised a pool of \$100,000 to fight the will and that Lou Payn of Columbia County, who was behind the project, profited from the outcome.³¹⁴ However, the sources which would either prove or disprove these allegations have disappeared. It seems quite certain that the nephews were not able financially to conduct such expensive litigation without assistance from some quarter. And in 1896 Samuel J. Tilden, II, assigned to the National Hudson River Bank of Hudson his claims on the Tilden estate to meet his financial obligations.³¹⁵ The merits of the case were widely discussed in the newspapers and law reviews. One result was the passage of a law in 1893 to make impossible for the future such a denial of the right of a man to dispose of his wealth through trustees for noble purposes.³¹⁶

³¹² Judge Daniels upheld Justice Lawrence, but Judges Van Brunt and Brady voted against his decision.

³¹³ Mrs. G. W. Smith, Ms. Notes and "The Tilden Will and Its Vicissitudes.

³¹⁴ Interview of the author with Major Albert Callan, of Chatham, N.Y. The Elizabethan statute was dug up by Delos McCurdy.

³¹⁵ Tilden Papers.

³¹⁶ *Laws of New York*, Chapter 701, 1893.

Meanwhile during this litigation of five and a half years, so wisely was the estate managed that it had been increased to \$6,110,859.³¹⁷ After the final decision the executors proceeded to settle with the heirs on March 30, 1892. Interest was paid on the special trusts until they were liquidated or the final accounting made on November 1, 1909. Mrs. Marie Celeste Stauffer Eastwick was still receiving interest in 1895. The Bucbanon trust was finally settled in 1906; the Blatchford trust in 1913. Thus by degrees the estate was gradually distributed in accordance with the court decision and the will.³¹⁸ By March, 1892, over \$5,500,000 of the personal estate was divided among the beneficiaries.³¹⁹ An inventory of the estate left in the hands of the executors in 1895 amounted to \$1,967,020.35 In 1914 there was about \$600,000 still unexpended.³²⁰

The Tilden estate was in the hands of the executors for 44 years before it was finally settled on May 6, 1930, by the surviving appointee, Mrs. George W. Smith. . . .

In the end Mrs. Smith made the final accounting of the estate.³²¹ Tilden's will contemplated the creation of a Tilden Trust with its own trustees to execute the provisions relative to the establishment of educational and scientific institutions. Upon the advice of Judge George F. Comstock.³²² The executors had the legislature incorporate the Tilden Trust on March 26, 1887.³²³ The charter made the three executors "permanent trustees" and authorized them to associate with them two more trustees, Stephen A. Walker and Alexander E. Orr, and empowered them to fill vacancies, to elect officers, to build a library and reading room, and to invest such funds as the executors turned over to them. The heirs made a desperate effort to prevent the formation of the Tilden Trust.³²⁴ The trustees first met April 26 and elected Bigelow president, Green vice president, Smith treasurer and Orr secretary. Bylaws were adopted and a seal approved. When the contest over the will was settled, the trustees turned their attention to the establishment of the library, for which purpose they had in hand \$2,250,000 -- about a third of the sum provided by Tilden. This money came from Mrs. Pelton's granddaughter, who, in exchange for \$975,000, relinquished to the Tilden Trust her interest in the Tilden estate.³²⁵

³¹⁷ Case on Appeal, 148. Testimony of G. W. Smith, May 26, 1890.

³¹⁸ Tilden Papers.

³¹⁹ *Life*, II, 367.

³²⁰ Tilden Papers.

³²¹ Mrs. G.W. Smith, Ms. Notes.

³²² Tilden Papers, Dec. 31. 1886.

³²³ *Laws of 1887*, Chapter 85.

³²⁴ *Bulletin of the New York Public Library*, Feb., 1917.

³²⁵ *Ib.*

For some years the creation of a great library in the metropolis had been discussed, and on January 11, 1886, Adolph L. Sanger had asked Tilden to serve as one of the incorporators of the "New York Public Library."³²⁶ Seth Low, president of Columbia, in 1894 invited the trustees of the Tilden Trust to cooperate in building up a great Columbia Library, but this request, together with many others to divert the fund for various scientific, charitable and educational purposes, was declined.³²⁷ Eventually in 1901 the Tilden funds were amalgamated with the Astor and Lenox Libraries to form the New York Public Library, for which a splendid building was erected in 1911 on Fifth Avenue. To this imposing structure went Tilden's library of 20,000 volumes, manuscripts, and works of art.³²⁸ Thus was realized, in part at least, the supreme ambition of one who as a poor young man in New [518] York City had gained so much of knowledge and inspiration from the inadequate libraries and reading rooms of an earlier day. He had become one of its pre-eminent citizens and public benefactors.

³²⁶ Tilden Papers.

³²⁷ *Ib.* Minutes of the Trustees of the Tilden Trust.

³²⁸ *Bulletin* of the New York Public Library, Feb., 1917.

The Cornell case, although involving somewhat different legal issues, raised similar concerns among those convinced of the importance of channelling the new industrial wealth into philanthropic channels. The Tilden case had centered on the general status of charitable trusts in states like New York, which had annulled the Statute of Charitable Uses and, more particularly, the capacity of testators to bequeath property to charitable trusts not yet in being. The Cornell case centered on restrictions that New York had placed on the size of endowments which could be held by charitable corporations -- which were limited to amounts specifically authorized by the legislature.

New York Tribune, November 28, 1888, p. 1.

DECIDED AGAINST CORNELL

MRS. FISKE'S LEGACY WITHHELD FROM THE UNIVERSITY.

THE COURT OF APPEALS HOLDS THAT THE UNIVERSITY IS LIMITED TO THE POSSESSION OF \$3,000,000 OF PROPERTY. AND CAN RECEIVE NO MORE -- THE ACTION TO BE CARRIED TO THE UNITED STATES SUPREME COURT.

Albany, Nov. 27.--There was a large attendance of lawyers at the session of the Court of Appeals today, and the decisions in several important cases caused much comment.

The Jennie McGraw Fiske will case, which has attracted much attention in the last two or three years, was among the actions decided to-day. Mrs. Fiske bequeathed \$290,000 for specific funds, and the "rest, residue, and remainder" of her estate, after the payment of certain legacies, to Cornell University. The estimated value of the bequest to the university was

\$1,500,000. The question raised was that its charter prohibited the university from taking any property beyond \$3,000,000. It was argued that Western land scrip held by the college was not property. Judge Peckham wrote an exhaustive opinion of 15,000 words, holding that the university had no power to take or hold any more real or personal property than the \$3,000,000 aggregate. Figures are produced by the judge to show that the college has a total of \$3,001,418, with counting the college Land Scrip fund, in the lands of the State as property. At the time of the death of Mrs. Fiske the university held property greater than its permitted aggregate, and under the circumstances could not receive this legacy. The court holds that the \$603,002.87 of college land grant funds are the absolute property of the university.

The contestants were Professor Willard Fiske, the husband, collateral relatives, and the children of a brother of John McGraw, who will now share the intestate portion of the state. Governor Hill was interested with C.P. Bacon in the early stages of this action as counsel for Professor Willard Fiske. Mr. Bacon, it is said, will receive \$75,000 for his services.

THE UNIVERSITY TO APPEAL THE CASE.

H.W. SAGE'S COMMENTS ON THE DECISION --

HOLDING THAT THE UNIVERSITY SHOULD

NOT BE CHARGED AS OWNERS OF THE LAND GRANT.

Ithaca, Nov. 27 (Special).--A decision in the contest over the will of Mrs. Jennie McGraw Fiske has been expected from the Court of Appeals for a long time, and when a dispatch came from Albany to-night that the university was beaten, great excitement prevailed. Mrs. Fiske died four years ago leave over \$1,000,000 to Cornell University. Her husband contested the will on the ground that Cornell already possessed all the property allowed by law. The Surrogate Court decided in favor of the university, but the General Term reversed the decision. Governor Hill was associate counsel for Professor Fiske, and S.D. Halliday, of this city, for the university. . . .

H.W. Sage, one of the founders of the university and its most generous patron, said tonight: "The decision was a surprise to me. We cannot tell anything about what will be our further action until we receive the opinion of the court and find out what their arguments are. So far as I am concerned, I never had entire confidence in winning the suit upon any other ground than that the land grant which caused our property to reach a sum in excess of what the law allowed was not legally ours and should not be charged to us in any accounting of property we have had. We do not own that land, never did and never shall, and we are only entitled to the interest from it. Our intention has always been to carry the suit to the highest court, if necessary. We shall now be obliged to ask the United States Supreme Court for an interpretation of the law of Congress in giving the land in trust -- whether the Government intended to give it, as the law requires, to the State in trust for the university, or to anybody who could buy it. I have always had great faith that we could win the suit on these grounds." The professors of the law school are unanimous in the belief that the university has good grounds for an appeal, and will eventually win the suit. The other university authorities are equally hopeful.

JOHN DEWITT WARNER'S OPINION.

HE THINKS IT LIKELY THAT THE CASE WILL
BE CARRIED TO THE SUPREME COURT
OF THE UNITED STATES.

John De Witt Warner, formerly a trustee of Cornell University, spoke concerning the decision to a Tribune reporter, who called upon him at his home, No. 62 West Ninety-third-st., last evening, as follows:

John McGraw in his lifetime was an intimate friend of Ezra Cornell. He was a trustee of the University and gave it benefactions before he died. At his death he left the bulk of his

fortune to his daughter Jennie, omitting all mention of the University in his will, much to the surprise of his friends. Professor Fiske, of the University, was a man of varied accomplishments, and an intimate friend of President White. After the death of John McGraw his daughter Jennie went to Europe. Professor Fiske met her there, and their former acquaintance was renewed, and finally they were married in Berlin at the house of Mr. White, who was then the American minister there. After their return to this country Mrs. Fiske died. In her will she bequeathed about \$300,000 to her husband, made various bequests to relatives, gave several hundred thousand dollars to the University, and besides left to the institution the entire residuary estate for the purpose of establishing and maintaining a library. Douglas Boardman, a trustee of the college and a friend of her father, was made sole executor. This will was admitted to probate without a contest. Professor Fiske, who was librarian of the University, afterwards became at odds with the Executive Committee of the University, and also with his wife's executor. He decided to go to Europe, but before sailing he went to the Mayor's office in this city with his friend, Charles P. Bacon, and there signed a document by which he asked that probate of the will in Tompkins County be opened, and that it be held that the University was limited by its charter to holding \$3,000,000 of property, it was not in existence as a corporation so far as receiving more than that, and that therefore Mrs. Fiske died intestate as to the amounts bequeathed to the college. The case was tried before Surrogate Lyon, who decided that the will was valid.

This was reversed by the General Term of the Supreme Court, and the Court of Appeals has now sustained the decision of the General Term. I think it likely that the case will now be carried to the United States Supreme Court for this reason. The property of Cornell University consists of a portion of land grant, given under the Morrill Act by the United States in the several states for educational purposes. The State of New-York obtained that land by legislation constituting in effect a contract with the United States. The University obtained it by a contract with the State. It seems plain that if the effect of the State law, creating a charter of

the University, should, in the particulars on which the contestants rely, be found to violate the contract between the State and the United States, the charter would, pro tanto, be void.

THE WILL AND THE CONTEST.

Cornell University may be said to have been the creation of several men. Ezra Cornell, its founder, had the good fortune to draw to the support of the university several wealthy men, and they all enriched it by their gifts. Among these men were Andrew D. White and Henry W. Sage. Another was the father of Jennie McGraw, who yet left her a large fortune. Miss McGraw thus may be said to have had a family interest in the success of the university. She married in 1880 Willard Fiske, a professor of the university, and a little later, in June of the same year, made a will in which she bequeathed the university a large proportion of her fortune. If the bequest had been undisturbed the college would now receive \$1,500,000. In addition, Mrs. Fiske bequeathed nearly a million and a quarter dollars to benevolent institutions, relatives and friends. Included in this \$1,500,000 was \$300,000 to her husband. There was also bequeathed by Mrs. Fiske \$400,000 for a students' hospital, and \$50,000 for the maintenance of a magnificent residence she had built, but which she desired to be used as a library building for the university.

Mrs. Fiske in her will also bequeathed \$200,000 in money and all her residuary estate to the library. When she made her will it was not supposed that the residuary estate would be of much value, but the sudden appreciation of the Western lands, of which this residuary chiefly consisted, before Mrs. Fiske's death had swollen the value of the residuary estate to at least one million dollars. The Western lands so despised were discovered to be some of the best pine lands remaining in the State of Wisconsin. The will of Mrs. Fiske was immediately contested, on the ground that the charter of the university forbade it holding property to an amount exceeding \$3,000,000 in value, and that as its property already exceeded that sum, it could not take it under the will. Charles P. Bacon, who was a student at Cornell University and then a

clerk in the law office of David B. Hill, at Elmira, nominally began the contest. Mr. Hill acted as associate counsel, and the fact that he did so, although as Lieutenant -Governor he was one of the trustees of the university, excited a great deal of unfavorable comment. The first decision on the case was in favor of the university, Surrogate Lyons, of Tompkins County, holding that, while Cornell University at the time of Mrs. Fiske's death, was receiving the benefit of property amounting to more than \$3,000,000, it was then actually the possessor and owner within the meaning of its charter of property worth less than \$600,000. Nevertheless the General Term of the Supreme Court reversed the decision of the Surrogate; and now the Court of Appeals has affirmed the judgement of the General Term. The trustees of the university, it is said, will attempt through the United States Courts to learn the actual amount of the endowment of their institution.

The struggle to change New York's charities laws appears to have been largely waged behind closed doors. Although the newspaper and periodical press devoted considerable attention to the court decisions on the Tilden and Fiske bequests, scarcely a word was printed on the efforts in the legislature to change the law. Occasionally, the debate would surface, as in Harvard Law School professor James Barr Ames's famous essay on the failure of the Tilden Trust and political economist Richard Ely's impassioned address to the Regents of the University of the State of New York (the body which oversaw the affairs of the State's charitable, educational, and scientific institutions). But these essays and speeches were directed at the state's elite -- not at the masses or even its political influentials.

James Barr Ames (1846-1910) was a protege of Christopher Columbus Landell, who as Dean of the Harvard Law School, transformed American legal education (Morison, 1930, 479). Under Langdell and his successor, Ames, Harvard became, for all practical purposes, a national institution and the legal scholarship produced by its faculty became an important influence on law and public policy. Because influential New Yorkers like J.P. Morgan and Theodore Roosevelt were closely tied to Harvard as donors or as graduates, the writings of men like Ames had particular impact.

James Barr Ames, "The Failure of the Tilden Trust," *Essays on Legal History and Miscellaneous Legal Essays* (Cambridge: Harvard University Press, 1913).

THE FAILURE OF THE "TILDEN TRUST."³²⁹

MELANCHOLY the spectacle must always be, when covetous relatives seek to convert to their own use the fortune which a testator has plainly devoted to a great public benefaction. But society is powerless, in a given case, so long as the forms of law are observed. When, however, charitable bequests have been repeatedly defeated, under cover of law, and that, too, although the beneficent purpose of the testator was unmistakably expressed in a will executed with all due formalities, and although the trustees were ready and anxious to perform the trust reposed on them, one cannot help wondering if there is not something wrong in a system of law which permits this deplorable disappointment of the testator's will and the consequent loss to the community. The prominence of the testator, and the magnitude of the "Tilden Trust," which has recently miscarried, have aroused so general an interest that this seems a peculiarly fit time to consider the legal reasons for the failure of that and similar charitable bequests in New York.

Governor Tilden's will is summarized by the majority of the court in *Tilden v. Green*,³³⁰ as follows: "I request you [the executors] to cause to be incorporated an institution to be called the 'Tilden Trust,' with capacity to maintain a free library and reading-room in the city of New York, and such other educational and scientific objects as you shall designate; and if you deem it expedient -- that is, if you think it advisable and the fit and proper thing to do -- convey to that institution all or such part of my residuary estate as you choose; and if you do not think that course advisable, then apply it to such charitable, educational, and scientific purposes as, in your judgment, will most substantially benefit mankind."³³¹ The trustees procured the incorporation of the [286] "Tilden Trust," and elected to convey the entire residue to that institution. An admirable will and willing trustees -- and yet the bequest was not sustained. If the trustees had not elected to give the property to the "Tilden Trust," that institution would have had no claim, nor would there have been, under the law of New York, any means of compelling them to apply it to the alternative charitable purposes. Therefore, the Court of Appeals decided, the trustees could not dispose of the property in either of the two modes indicated in the will, and the entire residue, amounting to some \$5,000,000 must be distributed among the heirs and next of kin.

³²⁹ Reprinted by Permission from the Harvard Law Review for March, 1892, with manuscript additions by the author.

³³⁰ 130 N.Y., 28 N.E.R. 880, 887.

³³¹ The writer is by no means convinced that this was a just interpretation of the will, but for the purposes of his article, its accuracy is assumed.

The question of the proper interpretation of the will apart, the failure of the "Tilden Trust" is due to a combination of two causes: the one legislative, the other judicial. Had the Tilden case arisen in England, or in any of our States, except New York, Michigan,³³² Minnesota,³³³ Maryland,³³⁴ Virginia,³³⁵ and West Virginia,³³⁶ the trust would have been established. The precise nature of the legislation in New York will be best appreciated by contrasting a private trust with a charitable trust.

A trust, being an obligation of one person to deal with a specific *res* for the benefit of another, cannot be enforced unless there is a definite obligee, that is, a *cestui que trust*, who can file a bill for its specific performance.³³⁷ Furthermore, as equity follows the law, the rule of perpetuities must apply to trusts as well as to legal estates. By the English and general American law, neither of these doctrines, which are of universal application to private trusts, is extended to charitable trusts. On the one hand, the considerations of public policy, which lie at the foundation of the rule of perpetuities in the case of private property, are obviously inapplicable to property devoted to charity; and, on the other, the specific performance of the charitable trust is abundantly secured through the attorney-general acting in behalf of the State.

In New York, however, the English law of charitable trusts has [287] been abolished by statute, and charitable trusts are thereby put upon the same footing as private trusts, with the single exception that property may be given directly to corporations authorized to receive and hold permanently bequests for specified charitable purposes. This exceptional New York legislation seems to the writer an unmixed evil. Any one who follows the reported cases, to say nothing of the unreported instances, for the last fifty years, will be startled at the number of testators whose reasonable wishes have been needlessly disappointed, and at the amount of property which has been diverted from the community at large for the benefit of unscrupulous relatives.³³⁸

³³² Methodist Church *v.* Clark, 41 Mich. 730. But see *White v. Rice*, 112 Mich. 403.

³³³ *Little v. Willford*, 31 Minn. 173; *Atwater v. Russell*, 49 Minn. 57, 51 N.W.R. 629.

³³⁴ *Gambel v. Trippe* (Md. 1892), 23 Atl. R. 461.

³³⁵ *Stonestreet v. Doyle*, 75 Va. 356.

³³⁶ *Bible Society v. Pendleton*, 75 W. Va. 79.

³³⁷ Y. B. 15 S Hen. VII. 12*a*.

³³⁸ *Owens v. Missionary Society*, 14 N.Y. 380; *Downing v. Marshall*, 23 N.Y. 366; *Levy v. Levy*, 33 N.Y. 97; *Bascom v. Albertson*, 34 N.Y. 584; *Adams v. Perry*, 43 N.Y. 487; *White v. Howard*, 46 N.Y. 144; *Holmes v. Mead*, 52 N.Y. 33; *Prichard v. Thompson*, 95 N.Y. 76; *Cottmer v. Grace*, 112 N.Y. 299; *Read v. Williams*, 125 N.Y. 560; *Read v. Williams*, 125 N.Y. 560; *Fosdick v. Hempstead*, 125 N.Y. 581; *Tilden v. Green*, 130 N.Y. 29, 28 N.E.R., 880.

Nor has New York, whose legislation in general has been widely copied, made any recent converts to her doctrine of charities. On the contrary, Wisconsin, which at one time followed the New York rule, by the revision of 1878 adopted the English practice with the exception of the so-called *cy-pres* doctrine. Virginia, too, which at one time ignored the distinction between private and charitable trusts, has, by statute, sanctioned to a limited extent indefinite charitable trusts.

But even under the New York Statutes, Governor Tilden's charitable purposes, it would seem, might have been accomplished within the rules applicable to private trusts. The objection of remoteness did not exist, for the will was carefully framed so as not to violate the rule of perpetuities; and the objection that there was no definite *cestui que trust* who could compel its performance was obviated by the willingness of the trustees to exercise their option in favor of the "Tilden Trust." Unfortunately, however, the New York courts had adopted a chancery doctrine, which was first stated in *Morice v. Bishop of Durham*.³³⁹ In that case property was bequeathed to the bishop upon trust to dispose of the same to such objects of benevolence and liberality as he should most approve of. This was obviously not a charitable trust, and, there being no *cestui que trust*, there was no one who could compel its performance. The bishop, [288] however, disclaimed any beneficial interest in himself and was ready, like the trustees in the "Tilden Trust," to apply the property in accordance with the testator's will. But the Master of the Rolls and the Lord Chancellor decided that the trust must fail, and decreed in favor of the next of kin.

One who dissents from a decision of Sir WILLIAM GRANT, affirmed by LORD ELDON, which has remained unchallenged for nearly ninety years, and which has been followed in many later decisions,³⁴⁰ must realize that he is leading a forlorn hope. Nevertheless the writer, finding himself unable to agree with the conclusion in *Morice v. Bishop of Durham*, ventures to give the reasons for his faith.

It will be granted at the outset that the decision in this case defeated the will of the testator, and that nothing short of an imperative rule of law can ever justify such a result. It is also certain that no such rule of law is mentioned by LORD ELDON. The distinguished

³³⁹ 9 Ves. 399, 10 Ves. 521.

³⁴⁰ *James v. Allen*, 3 Mer. 17 (*semble*); *Ommaney v. Butcher*, T. & R. 260; *Fowler v. Garlike*, 1 Russ. & M. 232; *Williams v. Kershaw*, 5 Cl. & F. 111 (*semble*); *Harris v. Du Pasquier*, 26 L.T. Rep. 689; *Leavers v. Clayton*, 8 Ch.D. 589; *Adye v. Smith*, 44 Conn. 60; *Chamberlain v. Stearns*, 111 Mass. 267; *Nichols v. Allen*, 130 Mass. 211. But see *Goodale v. Mooney*, 60 N.H. 528.

chancellor, after saying that the bishop could not hold for his own benefit, disposes of the bishop's willingness to perform the trust in this short and unsatisfactory fashion: "I do not advert to what appears upon the record of his intention to the contrary, and his disposition to make the application; for I must look only to the will, without any bias from the nature of the disposition, or the temper and quality of the person who is to execute the trust." Sir WILLIAM GRANT seems to have thought that the right of the next of kin resulted from an intestacy as to the beneficial interest.³⁴¹ But the fallacy of this view is demonstrable with almost mathematical conclusiveness. An intestacy, where, everything that the testator had passes by his will, is a self-evident contradiction. And yet in *Morice v. Bishop of Durham* all the testator's property did pass by his will to the bishop. If it be said that the legal title passed, but not the equitable interest, the answer is that the absolute owner of property has no equitable [289] interest. The use of the words "equitable ownership" and "equitable estate" is so inveterate among lawyers that we do not always remember that these are figurative rather than exact legal terms. An equitable interest is a right *in personam*. It implies, of necessity, a relation between two persons, known as the trustee and the *cestui que trust*. In the case of absolute ownership who is the trustee? An equitable claim by the owner against himself as the holder of the legal title would be an absurdity. Test the matter in another way. Transfer by intestacy is a true succession. The right of the successor is of precisely the same nature as that of his predecessor. The right of the next of kin, as established by LORD ELDON, was a genuine equitable interest. The next of kin were *cestuis que trust*, the bishop was trustee. In other words, the next of kin had a claim against the person of the bishop. But the testator never had any right against the bishop. How, then, any intestacy?

LORD ELDON and Sir WILLIAM GRANT, furthermore, relied greatly upon the case of *Brown v. Yeall*,³⁴² where the trust was void as a perpetuity, and their reliance upon this case warrants the belief that the case before them was assimilated, somewhat inconsiderately, to a distinct class of cases, where decrees in favor of the testator's heir or next of kin are eminently just. And this leads us to a consideration of the true principle by which courts of equity dispose of the beneficial interest in property where an intended trust necessarily fails.

³⁴¹ "If there be a clear trust, but for uncertain objects, the property that is the sub*icct of the trust, is undisposed of; and the benefit of such trust must result to those to whom the law gives the ownership in default of disposition by the former owner." 9 Ves. 399. See, to the same effect, *Levy v. Levy*, 33 N.Y. 97, 102, per WRIGHT, J., and *Holland v. Alcock*, 108 N.Y. 312, 323, per RAPPALLO, J.

³⁴²7 Ves. 50 ii.

If property is conveyed upon trust, and, by some oversight, no, beneficiary is designated, or if the beneficiary named is non-existent, or incapable of identification by the trustee, or refuses the gift, or if the trust is for an Megal purpose, the trust must, in the nature of things, fail.

The *res*, which is the subject-matter of the trust, vests, nevertheless, in the trustee. The courts might, conceivably, as LORD ELDON suggested in *Morice v. Bishop of Durham*, have allowed the trustee to hold the *res* for his own benefit, discharged of any trust. In fact, however, they have compelled him to hold the property as a trustee for the creator of the express trust, if he is still living, or for his representative, if he is dead. This equitable right, as we have seen, does not come to the heir or next of kin as an intestate [289] succession. The trust comes into being only after the death of the testator. Being the creation of the courts of equity it is a constructive or *quasi* trust, and founded, like all constructive trusts, upon natural justice. The trustee was plainly not intended to take the property for himself; he ought to hold it for some one; and no one, it is obvious, is, in general, so well entitled to the beneficial interest as the creator of the trust or his representative.³⁴³

If, however, as in *Morice v. Bishop of Durham*, and the "Tilden Trust," the performance of the express trust is not impossible nor illegal, even though there is no specific *cestui que trust*

³⁴³ Sometimes natural justice dictates a different disposition of the beneficial interest, *e.g.*, property is devised upon trust to distribute the same among members of a class; with full discretion as to the proportions and the individuals within the class. The trustee for some reason fails to distribute. The express trust, then, cannot be performed. The trustee, however, as before, ought not to keep the property for himself. But here it is much more consonant with natural justice to create a constructive trust for the equal benefit of all the members of the class than to give it to the testator's representative. Where the class is defined as "relatives," the trustee may, of course, select any relatives, however distant. But, if he makes no selection, an equal distribution among all kinsmen, near and remote, would commonly be impracticable. Equity, therefore, goes a step further and limits the equal distribution to those who would be entitled under the statute of distributions. This solution is doubtless in accordance with the general sense of justice. *Huling v. Fenner*, 9 R.I. 412. The common explanation of these cases, that there is a gift which vests in the class subject to be divested by the exercise of the trustee's discretion in favor of some one or more of the class, seems to be artificial and unsupported by the facts.

Again if property is bequeathed to a trustee for such charitable purposes as he shall designate, and the trustee names none, the express trust cannot be carried out. Equity, however, will treat this as a constructive trust for general charity and frame a scheme. And this disposition of the property, as every one will admit, is a nearer approximation to the testator's probable intention, and therefore more just than to create a constructive trust for his representative. *Minot v. Baker*, 147 Mass. 348, an cases cited.

named who compel its performance, the trust does not of necessity fail. Whether it shall fail or not in a given case must depend on the will of the trustee. If the trustee refuses to perform, as there is no one to compel performance, the trust falls, and the trustee, as in the other cases of impossibility and for the same reasons, will be held as a constructive trustee for the creator of the trust or his representative. If, however, the trustee is willing to perform the trust, these reasons lose all their force.

In the one case, where the will of the testator *cannot* be carried out, by interfering, prevents the unjust enrichment of the at the expense of others better entitled.

[291] In the other case, where the will of the testator *can* be fulfilled, equity, by interfering, defeats his will and thus produces the unjust enrichment of the testator's representative at the expense of the intended beneficiary.

In the one case, the impossibility of performing the express trust gives rise to an equitable constructive trust. In the other case, an inequitable constructive trust is what causes the impossibility of performing the express trust. Surely a strange perversion.

It may be said that there can be no trust without a definite *Cestui que trust*. This must be admitted. If, for instance, property is given to A. upon trust to convey to such person as he shall think deserving, and A. either refuses to convey to any one, or conveys to B. as a deserving person, there is, properly speaking, no express trust here. In the one alternative the express trust fails; in the other alternative B. gets the legal estate. But it does not follow from this admission that such a gift is void. Even though there be no express trust, there is a plain duty imposed upon A. to act, and his act runs counter to no principle of public policy. Why then seek to nullify his act? The only objection that has ever been urged against such a gift is that the court cannot compel A. to act if he is unwilling. Is it not a monstrous *non-sequitur* to say that therefore the court will not permit him to act when he is willing?

It may be objected that a devise might in this way become "the mere equivalent of a general power of attorney"; but this objection seems purely rhetorical. Suppose a testator to give A. a purely optional power of appointment in favor of any person in the world except himself, with a provision that in default of the exercise of the power the property shall go to the testator's representatives, or this provision may be omitted altogether, the effect being the same. Such a will is obviously nothing if not the mere equivalent of a general power of attorney. And

yet the validity of this power would be unquestioned. If the power is exercised, the appointee takes. If it is not exercised, the testator's representative takes.

Now vary the case by supposing that the testator imposes upon the donee of the power the *duty* to exercise it. Can the imposition of this duty furnish any reason for a different result? In fact A., the donee of the power, has in this case also the option of appointing or not, since, although he ought to appoint, no one can [292] compel him to do so. Does it not seem a mockery of legal reasoning to say that the court will sanction the exercise of the power where the donee was under no moral obligation to act at all, but will not sanction the appointment where the donee was in honor bound to make it?

It is time enough for the court to interfere when A. proves false to his duty and sets up for himself. Then, indeed, a court of equity ought to turn him into a constructive trustee for the donor or his representative. This contingent right of the heir or next of kin may be safely trusted to secure the performance of his duty by the trustee. And its existence is a full answer to the suggestion of Sir WILLIAM GRANT in *Morice v. Bishop of Durham*, and of Mr. Justice RAPALLO in *Holland v. Alcock*,³⁴⁴ that the trustee could keep the property without accountability to any one, if the beneficial interest were not given unconditionally to the heir or next of kin immediately upon the testator's death. The position of the heir or next of kin is, in substance, the same as in cases where property is given to them subject to a purely optional power of appointment in another to be exercised, if at all, within a reasonable time. Sir WILLIAM GRANT himself said, in *Gibbs v. Rumsey*,³⁴⁵ which was such a case: "The claim of the heir or next of kin is premature until it shall be seen whether any appointment will be made."

We may appeal from Mr. Justice RAPALLO in *Holland v. Alcock* to the opinion of the same distinguished judge in *Gihnan v. McArdle*.³⁴⁶ In each of these cases there was a trust for the same indefinite object, namely, the celebration of masses for the soul of the creator of the trust. In the former case the trust was expressed in a will, in the other case the trust was annexed to a conveyance *inter vivos*. In neither case was there any mode of compelling the specific performance of the trust. And yet the court would not allow the trustee under the will to perform the trust, but compelled him to surrender the trust property to the testator's representative; whereas the same court refused to prevent the trustee under the conveyance *inter vivos* from performing the trust, and decided that the right of the grantor's representative to the

³⁴⁴ 108 N.Y. 323.

³⁴⁵ 2 V.&B. 299.

³⁴⁶ 99 N.Y. 451.

trust property was contingent upon the refusal of the trustee to perform the trust. The distinction was said to result from the fact that there was a contract in *Gihnan v. McArdle*. But what difference could the [293] contract make beyond giving a right to sue at law for damages upon its breach? The duty to perform the trust was as cogent upon the trustee under the will as upon the trustee under the conveyance. In each case, and for the same reasons, the breach of that duty would give rise to an equitable obligation against the trustee to surrender the property which had been given to him upon confidence that he would perform the trust. And in neither case is there any assignable reason for creating this equitable obligation before any default in the trustee.

Although *Morice v. Bishop of Durham* has never been directly impeached, either in England or this country, there are several groups of cases, undistinguishable from it in principle, in which the equity judges have declined to interfere, at the suit of the next of kin, to prevent the performance of a purely honorary trust.

*Mussett v. Bingle*³⁴⁷ is one illustration. The testator bequeathed £300 upon trust for the erection of a monument to his wife's first husband. It was objected that the trust was purely honorary; that is, that there was no beneficiary to compel its performance. But the trustee being willing to perform, HALL, V.C., sustained the bequest. In the similar case of *Trimmer v. Danby*,³⁴⁸ KINDERSLEY, V. C., said: "I do not suppose that there would be any one who could compel the executors to carry out this bequest and raise the monument; but if . . . the trustees [*i.e.*, the executors] insist upon the trust being executed, my opinion is that this court is bound to see it carried out." There are many American decisions to the same effect.³⁴⁹

*Gott v. Naime*³⁵⁰ is another case at variance with *Morice v. Bishop of Durham*. In that case £12,000 were bequeathed to trustees, on trust at their discretion to buy an advowson and nominate to it such person as they should think proper. Subject to this trust, [294] the advowson was to be held in trust for A. until he should have a benefice worth £1,000 a year, or died. Until the advowson was bought the fund was to accumulate, and at the end of

³⁴⁷ W.N. [1876] 170.

³⁴⁸ 25 L.J. 424. See, further, *Masters v. Maters*, 1 P. Wms. 423; *Mellick v. Asylum*, Jacob, 180; *Limbrej v. Gurr*, 6 Mad. 151; *Adnam v. Cole*, 6 Beav. 353.

³⁴⁹ *Gilmer v. Gilmer*, 42 Ala. 9; *Johnson v. Holifield*, 79 Ala. 423, 424; *Cleland v. Waters*, 19 Ga. 35, 54, 61; *Detwiller v. Hartman*, 37 N. J. Eq. 347 (a \$40,000 monument); *Wood v. Vandemburgh*, 6 Paige, 277; *Emans v. Hickman*, 12 Hun, 425; *Re Frazer*, 92 N. Y. 239; *Hagenmeyer v. Hanselman*, 2 Dem. 87, 88 (but see *Re Fisher*, 8 N.Y. Sup. 10); *Bainbridge's App.*, 97 Pa. 482; *Fite v. Beasley*, 12 Lea 328; *Cannon v. Apperson*, 14 Lea, 553, 590.

³⁵⁰ 3 Ch. D. 278, 35 L.T. Rep. 209 S.C.

twenty-one years, or at A.'s death, or on his being presented to a benefice worth £1,000 a year, the fund was to belong to A., his executors and administrators, absolutely. The fund accumulated for twelve years. No advowson had been purchased, but the trustees did not desire to renounce the trust. Under the English rule, which gives a *cestui que trust*, who has the entire beneficial interest in property, the right to have a conveyance of the legal title, A. claimed to have the fund transferred to him. The bill was dismissed on the ground that A. had not the exclusive interest; for the trustees, though not compellable, were yet at liberty to nominate some person other than A. HALL, V. C., after remarking that the trustees disclaimed any beneficial interest and desired to perform the trust, added: "I see no reason why the trustees should not be allowed to carry out this trust."

A bequest for the celebration of masses for the soul of a deceased person is, in Ireland,³⁵¹ an honorary trust. No one can file a bill to compel its performance. But if the trustee is willing to comply with the testator's direction, the next of kin cannot interfere to prevent him.³⁵²

The most conspicuous illustration of the doctrine which is here advocated is to be found in the recent English case of *Cooper-Dean v. Stevens*.³⁵³ There was in this case a bequest of £750 for the maintenance of the testator's horses and dogs. It was urged by the residuary legatee, on the authority of *Morice v. Bishop of [295] Durham*, that this trust must fail, although the trustees desired to perform it. But the trust was upheld. NORTH, V. C., disposed of the plaintiff's argument as follows: "It is said that the provision made by the testator in favor of his horses and dogs is not valid; because (for this is the principal ground upon which it is put) neither a horse or dog could enforce the trust; and there is no person who could enforce it. . . . and that the court will not recognize a trust unless it is capable of being enforced by some one. I do not assent to that view. There is no doubt that a man may, if he pleases, give a legacy to trustees, upon trust to apply it in erecting a monument to himself, either in a church, or in a

³⁵¹ In Massachusetts and Pennsylvania a bequest for masses is a good charitable trust. *Schouler's Pet.*, 134 Mass. 426; *Seibert's Ap.*, 18 W.N. (Pa.) 276. In England such a bequest is void, as a superstitious use. *West v. Shuttleworth*, 2 M.&K. 684; *Re Fleetwood*, 25 Ch.D. 596; *Elliott v. Elliott*, 35 Sol. J. 206.

³⁵² *Commissioners v. Wybrants*, 7 Ir. Eq. 34, n.; *Read v. Hodgins*, 7 Ir. Eq. 17; *Brennan v. Brennan*, Ir. R. 2 Eq. 321; *Dillon v. Rielly*, Ir. R. 10 Eq. 152; *Att'y-Gen. v. Delaney*, Ir. R. 10 C.L. 104; *Bradshaw v. Jackman*, 21 L.R. Ir. 12; *Reichenbach v. Quin*, 21 L.R. Ir. 138; *Perry v. Tuomey*, 21 L.R. Ir. 480. The Court of Appeals has consistently maintained the opposite view in *Holland v. Alcock*, 108 N.Y. 312; *O'Connor v. Gifford*, 117 N.Y. 275, 280. See *Re Howard's Est.*, 25 N.Y. Sup. 1111; see also *Alabama, Festorazzi v. St. Joseph's Church*, 104 Ala. 327, 18 So. R. 394. (But see *Hagenmeyer v. Hanselman*, 2 Dem. 87. Even in New York a gift *inter vivos* for the celebration of masses for the soul of the donor is valid. *Gilman v. McArdle*, 99 N.Y. 451.

³⁵³ 41 Ch.D. 552.

churchyard, or even in unconsecrated ground, and I am not aware that such a trust is in any way invalid; although it is difficult to say who would be the *cestui que trust* of the monument. In the same way, I know of nothing to prevent a gift of a sum of money to trustees, upon trust to apply it for the repair of such a monument. In my opinion, such a trust would be good, although the testator must be careful to limit the time for which it is to last, because, as it is not a charitable trust, unless it is to come to an end within the limits fixed by the rule against perpetuities it would be illegal. But a trust to lay out a certain sum in building a monument ... is, in my opinion, a perfectly good trust, although I do not see who could ask the court to enforce it. If persons beneficially interested in the estate could do so, then the present plaintiff can do so; but if such persons could not enforce the trust, still it cannot be said that the trust must fail because there is no one who can actively enforce it. Is there anything illegal or obnoxious to the law in the nature of the provision -- that is, in the fact that it is not for human beings, but for horses and dogs?" The vice-chancellor answered this question in the negative, and added, "There is nothing, therefore, in my opinion, to make the provision for the testator's horses and dogs void."³⁵⁴ The learned reader will observe the care with which the distinction is drawn between trusts for a legal purpose and trusts for illegal purposes -- the precise distinction which LORD ELDON seems to have overlooked in *Morice v. Bishop of Durham*.

This distinction between an illegal trust and a valid, though [296] merely honorary, trust is well brought out by some decisions in the Southern States before the war. A bequest upon trust to emancipate a slave in a slave State was void, it being against public policy to encourage the presence of free negroes in a slaveholding community. But a bequest upon trust to remove a slave into a free State and there emancipate him was not obnoxious to public policy, and although the slave could not compel the trustee to act in his behalf, still the courts acknowledged the right of a willing trustee to give the slave his freedom in a free State.³⁵⁵ The reasoning of the courts is similar to that already quoted. RICE, C. J., for example, in *Hooper v. Hooper*³⁵⁶ says: "The Court of Chancery will recognize the *authority* of the executor to execute the trust. . . . But the slave cannot enforce its execution by suit. . . . The trust is one of that class which may be valid, and yet not capable of being enforced against the trustee by judicial

³⁵⁴ See to the same effect *Mitford v. Reynolds*, 16 Sim. 105; *Fable v. Brown*, 2 Hill, Ch. 378, 382; *Skrine v. Walker*, 3 Rich. Eq. 262, 269.

³⁵⁵ *Hooper v. Hooper*, 32 Ala. 669; *Sibley v. Marian*, 2 Fla. 553; *Cleland v. Waters*, 19 Ga. 35; *Ross v. Vertner*, 6 Miss. 305; *Thompson v. Newlin*, 6 Ired. Eq. 380, 8 Ired. Eq. 32; *Frazier v. Frazier*, 2 Hill, Ch. (S.C.) 304 (practice forbidden by statute in 1841 as against policy of slave states: see *Finley v. Hunter*, 2 Strob. Eq. 208, 214; *Gordon v. Blackman*, 1 Rich. Eq. 61); *Henry v. Hogan*, 4 Humph. 208; *Purvis v. Shannon*, 12 Tex. 140; *Armstrong v. Jowell*, 12 Tex. 58; *Elder v. Elder*, 4 Leigh. 252.

³⁵⁶ 32 Ala. 669, 673.

tribunals." So in *Cleland v. Waters*,³⁵⁷ per STARNES, J.: "At all events, if the executors do send him out of the country, no one can gainsay him. . . . Where there is no municipal law forbidding it, the testator can certainly make such a law for himself in his will, and the same reason exists why the executor should carry it into effect as why he should erect a monument or tombstone if so directed by the testator's will. It will not be disputed. . . that it would be the duty of the executor to carry such direction into effect, and that he would be sustained by a court of justice in so doing. . . . Yet it could not be said that the tombstone had any right in the premises or perhaps that any remedy lay against the executors, by which the erection of the stone could be enforced."

The true doctrine is nowhere better stated than by BUCKNER, C., in *Ross v. Duncan*:³⁵⁸ "The ground was taken that, as the negroes for whose benefit the trust was raised can maintain no suit in our courts to enforce it, and there being no one who can enforce it, the trust is void. The conclusion does not necessarily [297] follow from the premises. A trust may be created which may be perfectly consistent with the law, and yet the law may have pointed out no mode of enforcement; still it would not interfere to prevent it, but would leave its execution to the voluntary action of the trustee. A person may convey his property upon what trust or condition he pleases, so that it be not against law; and the court would only interfere at the instance of the heirs or tributees of the grantor or testator when there had been a failure or refusal to perform the condition or trust."

Whether, then, *Morice v. Bishop of Durham* be considered from the point of view of principle, or in the light of the subsequent adverse decisions, it seems clear that LORD ELDON'S opinion ought not to be followed unless by courts irrevocably bound by their own precedents. Unfortunately the New York Court of Appeals was thus hampered when the *Tilden* case came before it.

In *Holland v. Alcock*,³⁵⁹ the point had been taken, but without success, that the trustee, though not compellable to perform an honorary trust, should not be prevented from doing so. We must believe that no one of the numerous authorities in support of this position was brought to the attention of the court in that case, for Mr. Justice RAPALLO made the surprising statement that the trustee's contention had never been sanctioned by any decision. *Holland v.*

³⁵⁷ 19 Ga. 35, 61.

³⁵⁸ *Freem. Ch, (Miss.)* 587, 603.

³⁵⁹ 108 N.Y. 312.

Alcock was followed in *O'Connor v. Gifford*³⁶⁰ and *Reed v. Williams*.³⁶¹ Hence the subsequent failure of the "Tilden Trust."

³⁶⁰ 117 N.Y. 275.

³⁶¹ 125 N.Y. 560.

Richard T. Ely (1854-1943) was one of the founders of American social science. A political economist with an intense commitment to political, social, and economic reform, Ely published widely both for academic and lay audiences. Ely was particularly concerned with labor issues and with the increasing inequities in the distribution of wealth, identifying himself with that faction of reformers who looked to the public rather than the private sector as a source of reform. Ely's eloquent testimonial in favor of private giving to public institutions decried what was, in fact, was the dominant tradition of American philanthropy in most of the United States outside the Northeast.

Ely's description of how certain religious denominations accommodated themselves to public institutional settings is particularly worthy of note. Significantly, the denominations most likely to make such accommodations -- such "liberal" protestantisms as Episcopalians, Congregationalists, and Unitarians -- were the same groups which had supported "*undenominational*" activities in the South during Reconstruction -- in sharp contrast to the self-serving orientation of the "conservative" Baptists and Methodists (who were also the major promoters of denominational colleges).

Richard Ely, "The Universities and the Churches," *University of the State of New York -- 107th Annual Report of the Regents 1893* (Albany: The University of the State of New York, 1894), 352-64.

. . .The denominational institutions in the country are, with notable exceptions -- and I wish by repetition to emphasize the fact that there are notable exceptions -- poor institutions doing perhaps directly as much harm as good by diverting youth from superior institutions by appeals to sectarian loyalty, and indirectly doing vastly more harm than good by impeding the development of superior institutions and by cultivating a small spirit. Probably few in the east realize how narrow an outlook on life is given by many a sectarian college in our west. The minor denominational college must give inferior instruction because its means are so [353] limited. When one of my colleagues visited a sectarian institution in an adjoining state, the college took a holiday, evidently not wishing him to see the kind of work which was going forward. In another neighboring state a college president is scouring the country seeking to find an endowment of \$50,000, something like one sixth of the sum which the University of Wisconsin will spend during the coming year. According to recently compiled statistics of the 390 or 400 so-called colleges in the country, only 75 have an annual income from endowment equal to \$10,000 -- and only 90 can show an income from all sources of \$20,000. No matter how much self-sacrificing effort may go into the work of these institutions, -- and it is frankly admitted that they represent an immense amount of very noble self-sacrifice,-- it is simply impossible that they can do respectable work with such an equipment.

These denominational institutions of the poorer class which in the minds of competent persons are a disgrace to the denominations supporting them, bring no credit to the church. They. repel rather than attract the strong characters among the youth. At the same time they are too much inclined to conduct an ignoble war upon public educational institutions calculated to estrange from the church many who ought to be her strong adherents. It is true, it seems to me that in the west the worst enemy of the state universities has been sectarianism and not politics, and even when politics has appeared to be the enemy it has often merely been the tool of sectarianism. The spectacle which has been afforded to ingenuous youth when they have beheld the war of sectarianism upon public activity has not been an edifying one. Let us suppose now that a religious denomination turns frankly about, as many enlightened and earnest religious people would have the religious denominations do, and seeks heartily to support state universities and institutions like Cornell and to cooperate with them. At once such a religious denomination comes before the country in such a manner as to commend it to all true patriots. It says, in effect, We who belong to this denomination will seek not to pull down but to build up the state and what the state can not do on account of its limitations, that we will furnish. The

frank adoption of this policy by any religious denomination would add immensely to its prestige and be in keeping with its character as a true American church. At the same time, funds would be quite ample for the support of halls or dormitories such as I have advocated. In Madison, for example, I should say that a quarter of a million dollars would be a sum which would enable a religious denomination to do a very excellent work, although a larger endowment, of course, could be used. About \$150,000 of this sum, it would seem to me, should be expended upon grounds and buildings, and \$100,000 kept for endowment. The building itself would yield an income and this together with the income of the endowment, would support the principal and needed assistants and also maintain lecture courses. The position of the religious denomination thus cooperating with the state university would be most worthy and dignified. Let me remind you that the colleges at Oxford were originally simply dormitories or homes and were called halls.

The state universities have come to stay. With the exception of a few institutions in the east and perhaps Chicago and Stanford universities, they are to-day the leading universities in the United States and they are rapidly gaining upon all others. The University of Wisconsin has over 1200 students and is growing at the present time at the rate of about 200 a year. The University of Minnesota has some 1500 students and has increased more, rapidly in numbers in recent years than any other university in the United States. The University of Michigan has nearly 3000 students. Other state universities have also a large number and are rapidly gaining ground, and this increase in numbers has been attended with an equally remarkable improvement in quality of work. Here are thousands of young men gathered together. They are the flower of the land. What will the churches do for these young men? Will they leave them alone? Will a church which has 500 students in a state university do nothing for these 500 and devote all its energies and money to 100 in some sectarian college? Surely that is not rational even from a denominational standpoint. The thousands of young men in the state universities are ready and willing to be influenced. They are a rich field which a wise denomination can not permanently refuse to cultivate. The politicians in at least one western state have shown greater wisdom than religious leaders, thus illustrating, in one way the saying that "The children of this world are in their generation wiser than the children of light." While religious denominations are holding aloof from [356] the students in this institution, I have known a political leader carefully to cultivate relations with the students in order to have influence with them later after they have separated and gone out into different parts of the state and the country.

But I would not have you think that even now there is any ground for the charge that state institutions are godless or unfriendly to religion. Such is by no means the case. The

professors and regents or trustees of such institutions are mostly earnest church members and in their various denominations take part in the religious life of their respective communities. They are superintendents of Sunday schools, teachers of Bible classes, and without interfering with religious freedom they exercise a very great influence upon students. There are also among students of these institutions voluntary religious associations of many different kinds, and from them go into the ministry and mission field earnest men and women. Having been connected with two denominational institutions as well as a state university, I would claim for the latter at least as high a religious character as for the former. But all this has for the most part happened without the cordial support and cooperation of the church as an organized institution.

The funds which are already used by the different religious denominations of the country would be quite ample to carry out fully and efficiently the plan elaborated, and if there were surplus surely there is need for all the money which the church can raise. Are there not mission fields in every part of the world which are destitute? Is not Macedonia ever crying out: Come over and help us? Are there not colleges in Asia Minor and China and elsewhere which need help? Are there not the slums of cities crying out for light and reproaching in their misery the church and causing some to doubt Christianity Is there not enough and more than enough work for the church to do which the state will not and indeed can not do?

I would before leaving the special consideration of the subject from the standpoint of the church put forward the claim that the plan which I have advocated will tend to the unity of Christendom which is now so earnestly longed for by Christian people. It might not remove all denominational lines, and to many this does not seem desirable, but bringing into hearty [357] cooperation with public institutions the various religious denominations, they would cultivate a unity in action and would in time discover whether an organic unity is desirable or not.

I claim for this plan also the merit that it would elevate public life. The great evil at the present time in the United States is that the forces of good are too split up. There is in our country, always a desire on the part of the majority for good government, but there is little unity among those who constitute this majority. This grouping of churches about the state would give us unity with variety, and the public life which is now too often debased would be ennobled. The great trouble with us is that the state does not receive our affections. Our treasure is elsewhere and where our treasure is there also is our heart. Our interests are too diverse. We are engaged in various business enterprises like railways, gas works, electric lighting works, etc., which have interests by no means identical with those of the public, and even in education we have erected a means of division in the denominational college. We win money in industries

which must fight the state and then give money to sectarian institutions which continue to fight the state. What kind of a public life have we a right to expect under such circumstances? The measure which I propose would tend to strengthen public institutions, to induce men and women to make generous gifts to them and thus to bring to the state that feeling, that warm affection which the noblest patriots have ever cherished.

Something has already been accomplished in the direction advocated, and the plan outlined has the cordial support of many careful and experienced thinkers on educational topics. The views of Thomas Jefferson have already been quoted. His plans with reference to the University of Virginia have not as yet been fully carried out. Yet there is a certain grouping of the churches about the institution. Professor Noah K. Davis of the University of Virginia writes me as follows: Our practice here, which has been pursued for 40 or more years, is to appoint a chaplain for two years, in turn a methodist, a baptist, a presbyterian and an episcopalian, who is supported by voluntary contributions of professors and students. He devotes his whole time to the university, holding regular Sunday and week-day services. His efforts are seconded by our college Young Men's Christian association, the oldest in the world. . . .

[359] A beginning along this line has also been made at Boulder, the seat of the University of Colorado. There has been established there, under private auspices, a divinity school, the design, of which is to make use of the facilities supplied by the state university and to cooperate with it in every proper manner. This divinity school is mentioned in the circulars of the University of Colorado.

One of the most remarkable educational institutions in the United States is one in the work of which I am about to participate. I refer to Chautauqua, where to-morrow I shall have the honor of beginning a course of instruction. Chautauqua furnishes a fine illustration of the principle for which I am contending. We find at Chautauqua variety in unity. The presbyterians, congregationalists and the methodists have already their headquarters there, and the episcopalians are about to erect a building for their headquarters. Other religious denominations have also established headquarters at Chautauqua. They cultivate there their denominational life, and they unite together frequently for common worship and participate in education and recreation. I believe no enlightened member of any denomination represented at Chautauqua will claim that his denomination has suffered. On the contrary I think he will say that this spectacle of the union of Christians is highly beneficial to all who participate in the life there. . . .

[361] Many things which I would like to say I have been obliged to pass over. I have not dwelt upon the importance of state universities. I will say, however, that I thoroughly believe in taxation for the support of education of every sort in all its branches, and hold that the position of those who would divide educational institutions into classes, claiming that the state should support one kind and not the other, is entirely illogical as well as unhistorical, indeed, I may say un-American.

Yet I heard some one here to-day say that state aid was un-American. Washington, the Adamses, Jefferson and Monroe favored a national university at Washington. Were they un-American? Was Thomas Jefferson un-American when he founded the University of Virginia? Thomas Jefferson did not think so, but gloried in that university and wished it with the declaration of independence to be remembered with his name. What has been the practice of America? We who live in the northwest can not admit that a few states east of Ohio and north of Virginia shall tell what is American. In the early history of this country even those states contributed taxation for the support of the university and with the exception of those few states, every state in the American Union is taxed to-day for the support of higher education. Are they not American? Is Michigan not American? Are Wisconsin, Nebraska and Missouri not American? Is the title American to be restricted to the practice of New York and Massachusetts? I can not admit it for a moment.

I would like, if there were time, to say something about what constitutes paternalism. Is the state something apart from us, over us, doing things for us or do we ourselves act through the state? Where do the resources of the state come from and who determine its activity? If we ourselves act through the state I consider it a noble kind of self-help. This is paternalism, when the people have no trust in themselves; when they fold their arms and say we are not good nor wise nor competent enough to establish our own educational institutions and we hope some kind millionaire will do it for us. In the meantime we fold our arms and wait for somebody to help us. That is paternalism and a very bad kind of paternalism. The gifts of the rich are welcome; we have never refused them in Wisconsin. They are not refused in Michigan or Minnesota. But let us, not rely simply on rich men but rather help ourselves and then if rich men will help us to help ourselves that is desirable. If I could choose I would rather the state of Wisconsin should give its \$300,000 a year to the university than to have it come entirely from some rich man. I would not have any one take from the state that burden, or rather privilege, of supporting education in all its branches. If the University of Wisconsin had been supported by some multimillionaire through all these years, Wisconsin would not be where it is to-day in civilization. But this support has been an education and a fine one to the people of Wisconsin

as it has been to the people of Michigan and Minnesota. I glory in what my adopted state of Wisconsin is doing. I glory in the fact that her legislators and farmers and day laborers wish the university to enjoy an income of \$300,000 a year largely from taxation. I glory in the fact that the highest salary paid by the state of Wisconsin is paid to the president of the university of Wisconsin, a higher salary than received by any judge or by the governor of the commonwealth. If some of you in New York could go to these northwestern states and see what we are doing there, you would come back and wish perhaps that your Cornell university were not almost, but entirely a state university supported like the University of Michigan by a tax of perhaps one-sixth of a mill on all property in the state. And do the people approve of it or is it something done against their will? I would like to see a politician in the state of Wisconsin who would openly [363] attack the state university by appealing to the wage receivers and farmers. Not long ago I went into a field and talked with two men who were digging out stumps. I asked them whether they objected to paying taxes for the support of the state university. They said "No indeed, we are glad to pay the taxes," for they knew that, although they and perhaps their children would never go to state university, it was doing more than anything else in the state of Wisconsin for the little red school house at the country cross roads. As has been said by another speaker to-day the good results from education come from above and not from below. You can say we will have flourishing primary schools and none other; but if you do your primary schools will be very inferior.

Through a mistaken policy, private and sectarian foundations have been brought into existence resulting in the educational chaos from which we are struggling to emerge. We must recognize the situation. We can not make *tabula rasa* and begin from the beginning, but must build on foundations already laid and I urge the hearty cooperation of the best private and denominational schools with public educational institutions for the attainment of common ends, namely, for the suppression of quackery and pretense and for the encouragement of sound learning. I think that it is practicable to bring about such cooperation. By no means do I advocate an iconoclastic policy with respect to religious schools. Many of these institutions which, if we were making a beginning I would not regard as desirable have accomplished much. They have associated with them long history and tender traditions and must be used in building up the educational system in this country. I have myself been associated a good part of my life with private foundations, and attended as a student two denominational colleges for which I have affection. I have recently tried in a small way to assist a college under denominational auspices and have in mind a strictly denominational college to which I would like to make a donation. I can even conceive myself in the service of a university under denominational auspices and serving it faithfully, diligently. I mention this to show that I

recognize the facts with which we have to deal and to avoid misunderstanding. I would say to the churches, cooperate so far as practicable with the public institutions; foster your strongest denominational schools, bringing about consolidation where possible and, allowing the weak and inefficient to die out.

We have heard much of the free church in the free state. I would add to the rallying cry, "The free state and the free church," the free university, the university with freedom in teaching, freedom in learning and freedom in worshipping.

In the free state the free university allied to the free church will give us a glorious civilization.

THE TILDEN ACT AND THE "BOSTONIZATION" OF NEW YORK CHARITIES LAW

In the spring of 1893, with hardly a murmur in the press, New York's legislature, in two strokes, swept away the legal heritage of Jacksonian hostility to private institutions -- and in doing so cleared the path for the reformers' "mission to the millionaires." In an act passed in April, the legislature gave a blanket exemption to the property of religious, charitable, and educational corporations. Notably, the state's deep-seated suspicion of private charity was not entirely effaced: provisions of the act mandated (though did not specify) "reasonable compensation" for employees and charities and tried to ensure that the charitable exemption from real property taxes was not abused.

A few weeks later, the Legislature passed the "Tilden Act," which broadly affirmed the validity of charitable trusts and answered the objections to such trusts that the judiciary had raised in the Tilden case. In order to prevent "laughing heirs" like the Tilden nephews from taking title to properties left for charitable purposes, the legislature mandated that the state supreme court should take control of such properties and assigned to the state's attorney-general the tasks of representing the interest of charitable beneficiaries and seeing to the enforcement of charitable trusts.

Laws of the State of New York Passed at the One Hundred and Sixteenth Session of the Legislature, Begun January Third, 1893, and Ended April Twentieth, 1893, in the City of Albany. (Albany, NY: James B. Lyon, Printer, 1893), I: 1077-8.

Chap. 498.

AN ACT in relation to the exemption of the real property of religious, charitable and educational corporations and associations from taxation.

APPROVED by the Governor April 29, 1893. Passed, three-fifths being present.³⁶²

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

Section 1. The real property of a corporation or association organized exclusively for the moral and mental improvement of men and women or for religious, charitable, missionary, hospital, educational, patriotic, historical or cemetery purposes, or for two or more of such purposes, and used exclusively for carrying out thereupon one or more of such purposes shall be exempt from taxation. But no such corporation or association shall be entitled to any such exemption, if any officer, member or employee thereof shall receive or may be lawfully entitled to receive any pecuniary profit from the operations thereof, except reasonable compensation for services in affecting one or as proper beneficiaries of its strictly charitable purposes; or if the organization thereof, for any of such avowed purposes, be a guise or pretense for directly or indirectly making any other pecuniary profit for such corporation or association or for any of its members or employees, or if it be not in good faith organized or conducted exclusively for one or more of such purposes. The real property of any such corporation or association entitled to such exemption held by it exclusively for one or more of such purposes, and from [1078] which no rents, profits or income are derived, shall be so exempt, though not in actual use therefor, by reason of the absence of suitable buildings or improvements thereon, if the construction of such buildings or improvements is in progress, or is in good faith contemplated by such corporation or association. The real property of any such corporation not so used exclusively for carrying out one or more of such purposes, but leased or otherwise used for other purposes shall not be so exempt; but if a portion only of any lot or building of any such corporation or association is used exclusively for carrying out thereupon one or more of such purposes of any such corporation or association, then such lot or building shall be exempt only to the extent of the value of the portion so used, and the remaining portion of such lot or building to the extent of the value of such remaining portion shall be subject to taxation. Property held by an officer of a

³⁶²Certified as having passed the Senate by a two-thirds vote.

religious denomination, shall be entitled to the same exemption, suchject to the same conditions and exceptions as property held by a religious corporation.

Section 1. This act shall take effect immediately.

Laws of the State of New York Passed at the One Hundred and Sixteenth Session of the Legislature, Begun January Third, 1893, and Ended April Twentieth, 1893, in the City of Albany. (Albany, NY: James B. Lyon, Printer, 1893), II: 1748.

Chap. 701.

AN ACT to regulate gifts for charitable purposes.

APPROVED by the Governor May 13, 1893. Passed, three-fifths being present.

The People of the State of New York, representeds in Senate and Assembly, do enact as follows:

Section. 1. No gift, grant, bequest or devise to religious, educational, charitable, or benevolent uses, which shall, in other respects be valid under the laws of this state, shall be deemed invalid by reason of the indefiniteness or uncertainty or the persons designated as the beneficiaries thereunder in the instrument creating the same. If in the instrument creating such a gift, grant, bequest or devise there is a trustee named to execute the same, the legal title to such lands or property shall vest in the supreme court.

Section 2. The supreme court shall have control over gifts, grants, bequests and devises in all cases provided for by section one of this act. The attorney-general shall represent the beneficiaries in all such cases and it shall be his duty to enforce such trusts by proper proceedings in the court.

Section 3. This act shall take effect immediately.

A combination of factors led to dramatic increases in the level of charitable giving in the decade after 1893: increasing prosperity, as the country pulled out of the long period of turbulence that had followed the panic of 1873; changes in the legal infrastructure, especially changes in the charities laws of major industrial states like New York and Pennsylvania; rising awareness of the problems of poverty and dependency among the propertied classes, sparked by such works as Edward Bellamy's *Looking Backward* (1887) and Jacob Riis's *How the Other Half Lives* (1890). Undoubtedly too, the increasingly radical tone of the political opposition in the election of 1896 helped the wealthy see their charitable obligations more clearly. And, without a doubt, the reformers' "mission to the millionaires," which was carried out in person, in editorials and articles in the newspaper and periodical press, and from pulpits throughout the country, had its effect.

As one of the spearheads of the "mission," *The Review of Reviews* had a particular interest in keeping track of the progress of the effort. "The Magnitude of American Benefactions," which appeared in the April 1904 issue of the *Review* suggested the extraordinary success of the endeavor to channel the new wealth into charitable, educational, and scientific activities.

George J. Hagar, "Magnitude of American Benefactions," *The Review of Reviews* XXIX (April 1904), pp. 464-5.

TOUCHING on the oft-repeated inquiry as to whether the world is growing better or worse, it is inspiring to consider a series of facts that prove a stalwart unselfishness, a willingness of favored ones to promote the welfare of the less favored, and particularly a growing tendency on the part of men and women of large means to personally administer a fair share of their estates to aid the educational, religious, and philanthropic activities of the country.

A single line of action which I have had occasion to study closely for several years has developed results that are marvelous in their extent and most suggestive in their effects. In 1893, I was curious to ascertain approximately how much money, or material representing money, was given and bequeathed by citizens of the United States for religious, charitable, and educational purposes in a single year. After collecting a vast amount of figures, I sifted them so as to exclude all gifts and bequeathed less than five thousand dollars in money or material; all national, state, and municipal appropriations; and all ordinary contributions to regular church organizations and missionary societies. The residuum represented the purely individual benefactions.

The result of the first year's quest was such a grand tribute to the humanity of American men and women that the collecting has been kept up to the present day. If there were no other evidence to show that the part of the [465] world which occupies the United States *is* growing better, these annual totals and their great aggregate would be a sufficient demonstration.

Now for a few figures. The following table shows in round numbers the amounts of the gifts and bequests that were either made or became legally available in the years mentioned, under the restricted selection already noted:

| | |
|-----------|-------------------|
| 1893..... | over \$29,000,000 |
| 1894..... | " 32,000,000 |
| 1895..... | " 32,800,000 |
| 1896..... | " 27,000,000 |
| 1897..... | " 45,000,000 |
| 1898..... | " 38,000,000 |
| 1899..... | " 62,750,000 |

| | | |
|-----------|---|-------------|
| 1900..... | " | 47,500,000 |
| 1901..... | " | 107,360,000 |
| 1902..... | " | 94,000,000 |
| 1903..... | " | 95,000,000 |

If the omitted items could be gathered accurately, it would be quite reasonable to assume that this aggregate for eleven years would be swelled by at least \$250,000,000; but the known amounts, while doubtless far short of the real total, are monumental.

The above figures are also a reflex of the general financial condition of the country in the period covered by them. In 1896, when nearly every business interest was depressed, the total was the lowest on record: in 1898, during the war with Spain, when gifts went to more immediate and patriotic purposes, there was another drop; and in 1901, high-water mark was reached, chiefly by the gifts of one person, Andrew Carnegie, which aggregated more than \$31,000,000, leaving, however, more than \$75,000,000 to the credit of other benefactors.

Where does the money come from? In far less than a majority of individual cases, not from people considered rich in the present meaning of that word, although the acknowledged wealthy contribute the bulk of the total. In 1903, for instance, nineteen persons gave or bequeathed more than \$65,660,000. Gifts and bequests ranging from \$5,000 to \$25,000 aggregated nearly \$2,000,000, and those from \$25,000 upward reached the great sum of more than \$87,000,000. In two or three years there were few large benefactions, the totals being made up of an unusually large number of small sums. In the eleven years noted, there was an annual average of four hundred contributors to the totals.

Where does the money go? Andrew Carnegie makes a specialty of public libraries in his gifts, with a good sprinkling of checks among educational institutions of established reputation. Dr. Daniel K. Pearsons has a fondness for small colleges in the West and Southwest. John D. Rockefeller takes splendid care of the University of Chicago, and has several millions annually to pass around among Baptist institutions and other interests that appeal to his consideration. The Vanderbilts, besides their countless smaller benefactions, have given many millions, chiefly in new buildings, to Yale University. Mrs. Jane Stanford, piously carrying out the plans of her late husband, has made Leland Stanford Jr. University the most richly endowed educational institution in the world. Mrs. Phoebe A. Hearst has chosen the University of California as the recipient of her largest bounty. Helen M. Gould gives liberally wherever her money will help people to help themselves, with a strong leaning toward Young Men's Christian Associations.

It is quite safe to assert that the majority of gifts and bequests goes to colleges and universities, with homes and hospitals for men, women, and children next, and memorial buildings and church edifices following. Within a few years, there have been noticeably large gifts and bequests for the establishment and maintenance of institutions for entirely technical instruction.

Giving has become a business. When Mr. Carnegie offers \$75,000 to a city for a public library, it is conditional on the city raising one-tenth of that amount annually for the support of the library; when Dr. Pearsons offers a college \$50,000, it is conditional on the college raising \$150,000 more within a specified time; and so, too, with many of Mr. Rockefeller's proposed donations.

Many of the best-known givers have been obliged to surround themselves with barriers against professional solicitors. For many years, the Rev. Dr. Greer, now bishop-coadjutor of New York, has been the private almoner of the Vanderbilt families, and has had a large fund to distribute each year among such people and institutions as he deemed especially deserving. The private secretary of one man, the cashier of another, the confidential agent of a third, receives and investigates the applications for aid addressed to his principal.

It is an impossibility nowadays for one to obtain a soliciting interview with a conspicuous philanthropist without the latter having become satisfied with the worthiness of the object. Even then personal interviews are rare. Mr. Carnegie will write: "I have directed my cashier to send you," etc. Indeed, the personal annoyances of giving large amount have become so intolerable that it is now quite the fashion to have a gift of several hundred thousand dollars to a college for a new dormitory announced as a gift "from a friend who does not wish to have his name made public."

THE BUSINESS OF GIVING

By the turn of the century, the wealthy were not only giving more, they were, as Hagar suggests, beginning to explore new ways of giving. Not only was the scale of their fortunes so immense as to defeat conventional ways of distributing charitable dollars, events since the publication of Carnegie's "Gospel of Wealth" had underscored the need for an entirely new approach to giving -- an approach directed at the *causes* of problems rather than the mere alleviation of distress. "Your fortune is rolling up, rolling up like an avalanche," Frederick Gates, John D. Rockefeller's philanthropic advisor is said to have shouted at him one day early in the century. "You must keep up with it! You must distribute it faster than it grows! If you do not, it will crush you and your children and your children's children" (Fosdick, 1952, 3).

The new "scientific philanthropy" would draw on the expertise of the new universities and the cadres of experts who were becoming increasingly dominant in political, social, and economic life. The administration of charitable wealth in the new century would give rise to entirely new philanthropic instrumentalities -- notably grantmaking and operating foundations and family offices, which coordinated wealthy families' commercial and philanthropic interests (Marcus and Hall, 1992).

SOURCES:

"American Millionaires and Their Public Gifts," *The Review of Reviews* VII: 37 (February 1893), 48-60.

James Barr Ames, "The Failure of the Tilden Trust," in *Essays in Legal History and Miscellaneous Legal Essays* (Cambridge, MA: Harvard University Press, 1913), 285-97.

Richard T. Ely, "The Universities and the Churches," in University of the State of New York, *107th Annual Report of the Regents 1893* (Albany, NY: The University of the State of New York, 1894), 352-64.

Alexander Clarence Flick, *Samuel Jones Tilden: A Study in Political Sagacity* (New York, NY: Dodd, Mead & Company, 1939), 510-18.

"Decided against Cornell," *New York Tribune*, November 28, 1893, 1-2.

Raymond B. Fosdick, *The Story of the Rockefeller Foundation* (New York: Harper & Brothers, 1952).

Lloyd J. Graybar, *Albert Shaw of the Review of Reviews* (Lexington, KY: The University Press of Kentucky, 1974).

George J. Hagar, "Magnitude of American Benefactions," *The Review of Reviews* XX (April 1904), 464-5.

Stanley N. Katz, Barry Sullivan, and C. Paul Beach, "Legal Change and Legal Autonomy: Charitable Trusts in New York, 1777-1893," *Law and History Review*

Laws of the State of New York Passed at the One Hundred and Sixteenth Session of the Legislature, Begun January Third, 1893, and Ended April Twentieth 1893, in Albany (Albany, NY: James B. Lyon, Printer, 1893), I:1077-8, II: 1748.

George E. Marcus with Peter Dobkin Hall, *Lives in Trust: The Fortunes of Dynastic Families in Late Twentieth Century America* (Boulder, CO: Westview Press, 1992).

W.T. Stead, "Jay Gould: A Character Sketch," *The Review of Reviews* VII: 37 (February 1893).